
THE MAINE REPORTING PROJECT FOR FINANCIAL INSTITUTIONS

Fighting Financial Exploitation

TRAINER REFERENCE MANUAL
Second Edition



John Elias Baldacci, Governor

A public/private initiative between state agencies and the Maine Association of Community Banks, the Maine Bankers Association and the Maine Credit Union League.

THE MAINE REPORTING PROJECT FOR FINANCIAL INSTITUTIONS

Fighting Financial Exploitation

TRAINER REFERENCE MANUAL Second Edition

This manual is produced by:

Office of Elder Services

Department of Health and Human Services

442 Civic Center Drive, 11 State House Station

Augusta, ME 04333-0011

(207) 287-9200 FAX: (207) 287-9229

Toll Free: 1 (800) 606-0215

Toll Free TTY: 1 (888) 720-1925

<p>The Model for the Maine Reporting Project for Financial Institutions is the ©1995 Massachusetts Bank Reporting Project and has been modified with their permission. A list of funding sources for the 1995 Massachusetts Project is listed in Appendix E.</p>
--

CONTENTS

Summary Charts

Guide To Using This Manual.....	1
SECTION I: THE OVERVIEW.....	2
The Need for the Project	2
The Mission	3
The Project	3
Benefits for Financial Institutions	4
SECTION II: RECOGNIZING FINANCIAL EXPLOITATION	6
Key Terms	7
Types of Exploitation:	10
Personal Relationship (Family/Friends/Fiduciaries).....	10
Scam Artist (Scams).....	16
Detecting Financial Exploitation	25
SECTION III: RESPONDING TO FINANCIAL EXPLOITATION	28
Internal Response	30
Personal Relationship Exploitation.....	37
Scam Artist Exploitation	39
SECTION IV: PREVENTING FINANCIAL EXPLOITATION	42
Financial Institution Programs.....	42
Preventative Measures	48
SECTION V THE CONTEXT	54
Prevalence of Elder Abuse	54
The Adult Abuse Reporting Law.....	58
SECTION VI: TRAINING NOTES.....	64
Security Training	64
Employee Training	73

APPENDICES:

APPENDIX A: 22 MRSA Chapter 958-A (Adult Protective Services Act)
APPENDIX B: 9-B MRSA §161-164 (Confidential Financial Records Act)
APPENDIX C: 33 MRSA §1021-1025 (Improvident Transfers of Title)
APPENDIX D: Customer Fraud Alert Form (Samples)

APPENDIX E: Funding Sources for 1995 Massachusetts Bank Reporting Project

APPENDIX F: Footnotes to Text

OVERVIEW

THE NEED

- Incapacitated and dependent adults are increasingly financially exploited by family members, friends and acquaintances and scam artists.
- Employees of financial institutions are in an excellent, and sometimes the only, position to identify and prevent the financial exploitation of these adults.

PROJECT COMPONENTS

- Model Protocol for financial institution to report financial exploitation.
- Training Manuals for Trainers and Employees of Financial Institutions
- Consumer Publications
- Preventative Measures
- Consultation and Training

BENEFITS TO FINANCIAL INSTITUTIONS

- Community Benefits: Improved safety in the community for elders and other customers
- Business Benefits: Marketing advantage to older consumers, increased community recognition, increased employee satisfaction and decreased uninsured losses.

KEY TERMS USED IN THIS MANUAL

- **FINANCIAL EXPLOITATION:**

When a person illegally or improperly uses the resources of an incapacitated or dependent adult for the profit or advantage of someone other than the adult.

- **INCAPACITATED ADULT:**

Any adult who by reason of mental illness, mental deficiency, physical illness or disability lacks sufficient understanding or capacity to make or communicate responsible decisions about him/herself or effectively manage or apply his/her estate to necessary ends.

- **DEPENDENT ADULT:**

Any adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs. It includes but is not limited to residents of nursing and assisted living facilities

- **FINANCIAL INSTITUTION:**

Any bank or credit union, or branch of that bank or credit union, within Maine participating in the Project that may become aware of suspected financial exploitation.

- **SECURITY:**

Any designated department *or* individual with full or part-time responsibility for investigating and reporting possible instances of financial exploitation to outside authorities.

- **EMPLOYEE:**

Anyone at the financial institution with a full or part time job, other than security, who may have contact with customers and their financial records. Includes tellers, customer service representatives, managers, computer operators or other staff.

- **ADULT PROTECTIVE SERVICES (APS):**

Adult Protective Services (APS) is a program within the Department of Health and Human Services, the State agency mandated to receive and investigate reports of suspected abuse, neglect or exploitation of incapacitated and dependent adults.

- **APS INTAKE LINE (1-800-624-8404):**

Statewide 24 hour toll free intake number for reports of financial exploitation.

- **A. G.'S CONSUMER LINE (1-207-626-8800)**

Receives reports of consumer fraud Monday through Friday, 9 a.m. to 5 p.m.

- **LOCAL LAW ENFORCEMENT:**

The police department, sheriff's office or State Police in the city or town where the financial institution is located. Directly receives reports of scams. May be brought into the investigation following APS involvement.

- **SUSPECT:**

Anyone who reasonably appears to be engaging in financial exploitation. May be a family member or acquaintance, fiduciary or scam artist.

SYMPTOMS OF FINANCIAL EXPLOITATION SUSPICIOUS BEHAVIOR

A customer may be financially exploited if they are:

- **Accompanied by a stranger who encourages them to withdraw a large amount of cash.**
- **Accompanied by a family member or other person who seems to coerce them into making transactions.**
- **Not allowed to speak for themselves or make decisions.**
- **With an acquaintance who appears too interested in their financial status.**
- **Nervous or afraid of the person accompanying them.**
- **Giving implausible explanations about what they are doing with their money.**
- **Concerned or confused about "missing funds" in their accounts.**
- **Unable to remember financial transactions or signing paperwork.**
- **Fearful that they will be evicted, or institutionalized, if money is not given to a caregiver.**
- **Neglected or receiving insufficient care given their needs or financial status.**
- **Isolated from other family members or support by a family member or acquaintance.**
- **Financial exploitation is often found in combination with other forms of abuse.**

*Abuse, neglect or exploitation of an incapacitated or dependent adult should always be reported to
Adult Protective Services.*

TYPES OF FINANCIAL EXPLOITATION

PERSONAL RELATIONSHIP	SCAMS
<p style="text-align: center;">SUSPECT</p> <p>is known to the victim. May be family member, friend, acquaintance or fiduciary.</p>	<p>SUSPECT is a stranger to the victim and employs person-to person scam, and/or mail fraud, telefraud, or internet fraud.</p>
<p style="text-align: center;">VICTIM</p> <p>An incapacitated or dependent adult</p>	<p style="text-align: center;">VICTIM</p> <p>Any individual, regardless of age or capacity</p>
<p>SUSPECT acts or fails to act in a way that causes monetary or property loss to the victim and gain to self. FINANCIAL EXPLOITATION is sometimes combined with other forms of abuse & neglect and may include:</p> <p style="text-align: center;">Mismanagement of income or assets</p> <p style="text-align: center;">Signing checks or documents without the victim's consent</p> <p style="text-align: center;">Charging excessive fees for rent or caregiving services</p> <p style="text-align: center;">Stealing money or property</p> <p style="text-align: center;">Obtaining money or property by undue influence, misrepresentation or fraud.</p>	<p>SUSPECT employs a person-to-person scam, and/or engages in mail fraud or telefraud to obtain money. Common scams are:</p> <p style="text-align: center;"><i>The Bank Examiner</i></p> <p>Victim is enlisted by fake bank examiner to withdraw money as part of government investigation into teller fraud</p> <p style="text-align: center;"><i>The Pigeon Drop</i></p> <p>The con (usually a woman) claims to be willing to split found money with victim if victim makes a "good faith" payment</p> <p style="text-align: center;"><i>The Fake Accident Ploy</i></p> <p>The con gets the victim to withdraw money on the pretext that the victim's child is in the hospital</p> <p style="text-align: center;"><i>The Bogus Vacation</i></p> <p>The victim gets a call saying they have won a free or cheap vacation. They must give out account information to verify the deal.</p>

SYMPTOMS OF FINANCIAL EXPLOITATION

SUSPICIOUS ACCOUNT ACTIVITY

- **Unusual volume of account activity:**

Frequent account changes from one branch/ financial institution to another.
Change in pattern of withdrawals (e.g. several in one day), or unusually large amounts.
Large withdrawals or transfers from recently opened joint accounts.

- **Account activity inconsistent with customer's usual habits:**

Large withdrawals from previously inactive account or savings account.
Frequent withdrawals made through ATMs, especially if customer is physically frail and has not used ATM previously.
Regular rent or utility payments by check cease abruptly.
Stable, single beneficiary trusts are revoked.
Distribution provisions are altered to require payments to third parties.

- **Suspicious signatures on checks or other documents, like credit card applications:**

Customer's signature appears forged.
Customer's signature appears correct but amounts are written in a different handwriting. Use of different pens or inks may indicate that something is wrong.

- **Sudden increases in incurred debt when customer appears unaware of transactions:**

Loans or second mortgages are obtained.
Large credit card or reserve credit debts.

- **A fiduciary or other person begins handling the customer's affairs, withdrawing funds with no apparent benefit to the customer.**

- **Account statements and canceled checks are no longer sent to the customer's home (verify that this is the customer's wish).**

- **Implausible reasons for account activity are given either by the customer or the person accompanying them.**

EMPLOYEE RESPONSE: ACTION STEPS

- 1. Learn the reason for large transactions or withdrawals.**
- 2. Check authorization and documentation to act for customer.**
- 3. Provide Confidence Crime/Financial Exploitation Alert form.**
- 4. Get photographic evidence (and be able to describe suspect).**
- 5. Consult with security at any time.**
- 6. Ask customer to speak with security.**
- 7. Notify security or law enforcement AT ONCE if you believe the customer is in immediate danger.**

REMEMBER:

- Time is the enemy of the financial exploiter.**
- Justify your concern and emphasize the commitment of your financial institution to protecting customers.**
- Empathize with the customer and validate their feelings.**
- Ask clear, non-threatening factual questions.**
- Tell customers they aren't alone (people are reluctant to reveal exploitation).**
- Don't say that you are concerned simply because a customer is elderly.**
- Don't let anyone else speak for the customer. This is a "red flag" that something is wrong.**

THREE STEP REPORTING

PERSONAL RELATIONSHIP EXPLOITATION	CONFIDENCE CRIMES (SCAMS)
<p>1. Employee always makes oral report to security/designated manager no later than beginning of next business day.</p> <p>Employee does not contact APS.</p>	<p>1. Employee makes oral report to security/ management (preferred).</p> <p>Emergency procedure: Employee makes report to law enforcement prior to notifying security / management.</p>
<p>2. Security/ management makes immediate oral report to APS.</p> <p>Security/ management provides written report to APS in 48 hours.</p> <p>Contents of Report to APS</p> <ul style="list-style-type: none"> • Name, age (estimate) address & telephone number of victim • Name, relationship & address of suspect (if known) • Description of suspicious circumstances • Origin of the report: institution name, branch, address and reporter name • Other agency(ies) involved (if any) 	<p>2. Security/ management makes immediate report to law enforcement, unless emergency situation.</p> <p>Contents of Report to Law Enforcement</p> <ul style="list-style-type: none"> • Name, age (estimate) address and telephone number of victim • Full description of suspect • Description of incident • Location of incident (financial institution, branch, & address) • Description of suspects car & license number (if known)
<p>3. Written report filed by security/ management for internal review</p>	<p>3. Written report filed by security/ management for internal review</p>

GUIDE TO USING THIS MANUAL

This manual is a comprehensive reference tool for financial institutions training personnel to identify and report financial exploitation of incapacitated and dependent adults. The manual addresses the questions and issues relating to the financial exploitation of incapacitated and dependent adults.

Senior management, marketing, community outreach and public relations specialists should read Section I: Overview; Section IV: Prevention; and scan the summary pages.

Security officers and managers designated to receive and screen reports of suspicious situations from other employees should concentrate on Section II: Recognizing Financial Exploitation and Section III: Responding to Financial Exploitation. Early identification and swift action to prevent further loss are crucial in protecting elders and other vulnerable adults from financial exploitation.

Trainers for financial institutions should develop a comprehensive knowledge of the contents of the manual. In addition, Section VI: Training Agenda provides two training outlines that can be adapted to the financial institution's needs.

The first program is a one and a half hour session for security officers and designated managers.

The second is a thirty minute session for personnel in direct contact with customers. This is taught in conjunction with the **Employee Manual**.

The summary pages may also be used as overheads and handouts.

<p>This project is modeled from the Massachusetts Bank Reporting Project and is used with their permission.</p>

SECTION I

OVERVIEW

Mrs. G., 77, is a retired singer who lives alone. Although in excellent physical health, she has symptoms of early Alzheimer's disease.

Tellers at her financial institution noticed that Mrs. G. often had facial bruises, and was accompanied by several different men in their early 20s. Mrs. G. often appeared nervous. When she realized that there was no money left in her account at the end of the month (which frequently happened) she became upset and fearful. Security at the financial institution contacted Adult Protective Services.

An investigation revealed that these young men contacted Mrs. G. every month when her Social Security check was due. They would ask her to go out on the town. By the end of the evening Mrs. G. would be intoxicated, and they would take all her cash. Due to her memory loss, she would not know where her money had gone. She also forgot from month to month that these men threatened, and sometimes hit her, to make her take more cash out of the financial institution.

Cooperation between the financial institution, Mrs. G.'s daughter, and her caseworker has served to prevent Mrs. G.'s "friends" from stealing more money. Mrs. G. agreed to have her daughter help her with money management. The men who physically abused and exploited Mrs. G. have not been identified. Personnel plan to contact the caseworker should anyone other than her daughter accompany Mrs. G. to the financial institution.

I. THE NEED FOR THIS PROJECT

Abuse, neglect and exploitation of incapacitated and dependent adults is occurring at an ever increasing rate. Often, these victims are elders. Both the media and average citizen tend to focus on the most visible tragedy: physical abuse. Financial exploitation, however, which involves the illegal or improper use of an adult's resources, can be equally devastating. Once assets have been misappropriated, the victim may be unable to get the assets back. Approximately 40% of all elder abuse involves financial exploitation, most often by people known to the victim such as

relatives or friends. Similarly, the Attorney General's Office has found that an increasing number of cases involve "con artist" scams against the elderly. The true extent of con artist victimization is difficult to assess, since it is one of the lowest reported crimes. Taken together, the incidence of financial exploitation, by those known and unknown to their victims, is staggering.

Employees of financial institutions, at all levels, understand that this is a significant problem demanding a comprehensive response. Financial institutions administer accounts, trusts and other financial assets of

incapacitated and dependent adults, and employees are in a unique position to have early (and often the only) knowledge of financial abuse. Yet because of a lack of information about identifying and reporting exploitation and the industry's justifiable concern regarding its legal obligation not to disclose confidential financial records, financial institutions rarely report these cases to public authorities. This potentially places financial institutions as well as their customers in jeopardy.

The *Maine Reporting Project for Financial Institutions* is designed to educate personnel at financial institutions about the nature of adult abuse, neglect and financial exploitation and to work toward prevention and reporting of this kind of activity.

II. THE MISSION

By educating the employees of financial institutions and consumers, the Project hopes to prevent financial exploitation of incapacitated and dependent adults. Further, by providing simple and effective reporting procedures for financial institutions, the Project will facilitate more effective cooperation between financial institutions, Adult Protective Services and local law enforcement. This enhanced cooperation will result in more timely and effective investigations and service provision to incapacitated and dependent adults.

III. THE PROJECT

The Project has created a model protocol for reporting and responding to financial exploitation and training materials for trainers and personnel of financial institutions. Project staff are available for consultation and training.

Since there is significant variation among financial institutions in terms of size, procedures and resources, the Project advocates a flexible approach. While all financial institutions are encouraged to participate as fully as possible, the Project's components may be tailored to the financial institution's individual needs.

A. MODEL PROTOCOL

The hallmark of the model protocol for reporting financial exploitation is its simplicity and efficiency. It is designed to minimize the time personnel of financial institutions spend on these cases.

It also provides legal protection for financial institutions and customers by advancing a basic level of financial protection for customers while accommodating concerns about the release of confidential information.

B. TRAINING MATERIALS FOR TRAINERS AND PERSONNEL OF FINANCIAL INSTITUTIONS

Two training manuals have been published. This publication is a comprehensive reference manual for personnel of financial institutions who train their own staff. It is accompanied by an abbreviated manual for employees that focuses specifically on identifying and reporting financial exploitation.

C. CONSUMER PUBLICATION

Brochures to educate customers about safeguarding their funds will also be developed through the Project. These publications may be replicated or adapted by individual institutions for their own needs. Public education is an extremely important component of any successful prevention effort.

D. PREVENTATIVE MEASURES

The Project encourages a proactive approach to prevention by financial institutions. Prevention initiatives, including community education, product lines and security measures, may be incorporated into a marketing strategy. Section IV of this manual describes preventative measures that can be instituted by financial institutions, or taken by customers.

E. CONSULTATION AND TRAINING

Individual financial institutions should feel free to consult with Project staff on tailoring the protocol and training to their needs. Using a "train the trainer" model, Project staff will train representatives from financial institutions throughout the State. These representatives will then train their own personnel. Project staff may also be available to assist in local training of personnel having direct contact with customers.

IV. BENEFITS TO FINANCIAL INSTITUTIONS

To put it simply, joining the Project is good for the community, good for business, and good for employees.

A. COMMUNITY BENEFITS

Financial institutions have traditionally been generous in their support of activities that benefit the community. This Project presents financial institutions with another opportunity for community service. They will now be in a better position to prevent or, if need be, to intervene in situations where incapacitated or dependent adults, often elders, are being exploited.

Elders have typically given a life of service to their families and communities. At a time when they could be enjoying their lives and reflecting on past accomplishments, an

increasing number of elders are vulnerable to financial victimization. In addition, adults with disabilities are often viewed as "easy targets" by potential abusers. The Maine Reporting Project for Financial Institutions offers financial institutions a significant role in improving the safety of the community.

B. BUSINESS BENEFITS

Marketing Advantage

With an increasing elder consumer base, many financial institutions are developing product lines geared specifically for older customers. Product lines now providing reduced fees on travelers checks, money orders and bank checks, or services such as newsletters and travel discounts, may incorporate educational material on the prevention of financial exploitation.

Financial institutions that respond to customer anxiety about financial protection, while respecting customer confidentiality and autonomy, will establish themselves as institutions willing and able to address the needs of their customers.

Recognition

Financial institutions that participate in new initiatives that benefit consumers, particularly persons who are more vulnerable to abuse and crime, are often recognized by community groups and business or regulatory organizations for their dedication to excellence.

Decreased Uninsured Losses

Participating financial institutions may also benefit by decreasing uninsured losses. Persons who have lost funds due to fraudulent activity, such as forged instruments and unauthorized withdrawals from an account, will often contact their financial institution seeking restitution. Implementing the model protocol developed by the Project will provide financial institutions with a legal mechanism for recognizing, responding to, and preventing financial exploitation of incapacitated and dependent adults.

Effective prevention stops misappropriation in the first place, while the proper response increases the chance that misappropriated funds will be recovered or losses will be minimized. In either case, there is a greatly diminished chance that participating financial institutions will need to pay restitution for customer losses or, worse yet, become involved in litigation over who should bear losses.

C. EMPLOYEE BENEFITS

Many financial institutions currently have effective security programs in place, yet there is a growing sense among employees that a statewide response involving both public and private sectors is needed.

Like the financial institutions they serve, employees have a stake in their communities. They appreciate the opportunity to make meaningful contributions to the well-being of older community members through their professional work. The opportunity to contribute, and the knowledge that it will make a difference, can only enhance employee morale.

Finally, employees of financial institutions may also see customers who, for reasons of failing health or mental functioning, appear to need help at home. Many are not aware of Adult Protective Services and the other community-based resources that are available for these customers. The Project provides an excellent opportunity for employees to learn about local services to which they can refer these customers.

SECTION II

RECOGNIZING FINANCIAL EXPLOITATION

Mr. J. went to his financial institution once a week to cash a check for a small amount. In one week a teller noticed that he came in three different times. He was accompanied by a woman the teller had not seen before. On each occasion, Mr. J. cashed increasingly large checks. The final check cleaned out his account.

The following week, the teller called Adult Protective Services in great distress. She asked if Mr. J. could be helped. He came into the financial institution to cash his usual check, and she had to tell him that his account was empty. Mr. J. did not seem to remember the transactions he had made the previous week. When he discovered he had no money, he stood in the lobby and cried.

The teller said that she had felt something was wrong, but had not known what to do. Had she been aware of the warning signs of financial exploitation, and the protocol for reporting it, this exploitation might have been prevented.

Employee awareness of the methods used by exploiters, and the behavior of their victims, greatly increases the chance that financial exploitation of incapacitated and dependent adults will be identified by financial institutions. First, there is observable behavior in the customers visiting the institution and in the persons accompanying them or carrying out transactions for them. Second, there are the identifiable "paper trails" left by exploiters as they manipulate their victims' assets. The most alert and conscientious employee will not be able to detect every case of financial exploitation.

With technological advances, detecting financial exploitation becomes more complex. The development of Automated Teller Machines (ATMs) and twenty-four hour telephone banking, for example, increases the risk of exploitation, while simultaneously making it harder to detect. Such technology decreases personal contact between employees and customers, thus limiting opportunities to pick up on observable signs of exploitation. In spite of these challenges, however, the attentive employee can uncover many cases of exploitation.

KEY TERMS

1. FINANCIAL EXPLOITATION

Financial exploitation occurs when a person illegally or improperly uses the resources of an incapacitated or dependent adult for the profit or advantage of someone other than the adult. This is accomplished without the adult's *consent*, or when the adult is tricked, intimidated or forced into giving consent.

Also, *valid consent* requires that the adult have the mental capacity to understand what is happening and the consequences of his/her action. An adult who does not have the mental capacity to give consent, either because of dementia, confusion or some other reason, has *not* given consent. The issue of capacity and consent is explored in greater detail in Section V.

Financial exploitation does *not* occur if the adult knowingly consents to the transaction (for example, a gift).

Consumer fraud is another form of financial exploitation which occurs whenever a business or other consumer organization engages in unfair or deceptive trade practices. Examples of consumer fraud include misleading advertisements, sales of substandard merchandise, or the violation of regulatory guidelines by insurance, health care or home repair industry.

While financial exploitation may or may not constitute a crime depending on the circumstances of the case, it should *always* be reported to the appropriate authorities, as described in Section III. This basic understanding is the heart of the protocol.

2. FINANCIAL INSTITUTION

"Financial institution" refers to any bank or credit union within Maine that agrees to implement this protocol. It also refers to

any branch office of any bank or credit union that may become aware of suspected financial exploitation.

3. SECURITY

Security refers to any designated department or individual with full or part-time responsibility for investigating and then reporting possible instances of financial exploitation to outside authorities.

This broad definition is purposefully adopted so that each financial institution implementing this protocol may decide who shall receive and otherwise respond to reports of financial exploitation. For example, depending on its size and other factors, a financial institution may decide that reports will be filed by its security department, a specific security officer, a designated department head or other executive, or the involved branch manager.

This protocol recommends that participating financial institutions designate a particular department or manager to receive, review and respond to exploitation reports. By having this kind of internal "clearinghouse," the financial institution ensures consistency in the level of information that gives rise to official reports; shields employees from unnecessary involvement in ongoing investigations; and establishes a central review and reporting mechanism that facilitates cooperation between financial institutions, Adult Protective Services and local law enforcement.

4. EMPLOYEE

An employee is anyone with a full or part-time job in a financial institution, other than security, who may come in contact with customers and their financial records. Typically, the employee will be a teller or

customer service representative, but it may also be a manager, computer operator or other staff member.

5. ADULT PROTECTIVE SERVICES (APS)

Adult Protective Services is a program within the Department of Health and Human Services that receives and investigates reports of suspected abuse, neglect and exploitation of incapacitated or dependent adults.

APS receives and investigates reports generated by financial institutions. This protocol deals with financial exploitation because that is the prevalent form of abuse that financial institutions encounter. The reporting law, however, allows financial institutions to report any suspected instances of neglect and/or abuse in addition to financial exploitation. There have been cases where financial institutions became aware of the neglect or abuse of an incapacitated or dependent adult and reported these cases to APS.

Suspected abuse or neglect of a minor (anyone under 18 years of age) should be reported to the Bureau of Child and Family Services by calling the Child Protective Intake number at 1-800-452-1999.

6. APS INTAKE LINE

APS maintains a statewide 24 hour toll free intake number, reached by calling **1-800-624-8404**, for reports of suspected abuse, neglect and exploitation of incapacitated or dependent adults.

7. ATTORNEY GENERAL'S CONSUMER PROTECTION UNIT

The Consumer Protection Division of the Attorney General's Office can be reached during business hours by calling **1-207-626-8800**.

8. INCAPACITATED ADULT

An incapacitated adult is "any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that that individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual's person, or to the extent that the adult cannot effectively manage or apply that individual's estate to necessary ends." See Appendix A: 22 M.R.S.A. §3472(10)

9. DEPENDENT ADULT

A dependent adult is an "adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs" See Appendix A: 22 M.R.S.A. §3472(6)

10. LOCAL LAW ENFORCEMENT

Local law enforcement refers to the police department, sheriff's office or State Police in the city or town where the financial institution is located. Law enforcement will directly receive certain reports of financial exploitation and, in other cases, may be brought into the investigation following APS involvement.¹

11. SUSPECT

A suspect is an individual who reasonably appears to be engaging in some form of financial exploitation. There are generally three types of suspects: family members or acquaintances, fiduciaries, and scam artists.

**A. FAMILY MEMBERS AND/OR
ACQUAINTANCES**

Suspect family members or acquaintances will manipulate their personal relationships with incapacitated or dependent adults to gain access to their funds or property. These people may be sons, daughters, or other relatives and “loved ones,” neighbors, “friends,” home health aides or other caregivers, or any members of the community with whom the victim has ongoing personal relationships.

B. FIDUCIARIES

Fiduciaries are individuals who have been appointed by a Probate Court as guardians or conservators, have been appointed in a legal document known as a Power of Attorney or are acting as Representative Payees. The legal status of these fiduciaries affords them access to the assets of incapacitated or dependent adults, which they may improperly use for their own benefit. See Section V for more information on fiduciary relationships.

C. SCAM ARTISTS

Scam artists are initially strangers to the incapacitated and dependent adults they con. Through various schemes, scam artists approach their victims in person, over the telephone or through the mail in order to take money or property. Some scam artists will establish ongoing relationships with vulnerable adults to facilitate long-term exploitation.

TYPES OF EXPLOITATION

There are two main categories of financial exploitation. First, exploitation by people **known** to the victim: family members, acquaintances and/or fiduciaries. Second, exploitation by people **unknown** to the victim: scam artists. Each type of perpetrator typically uses different methods to exploit their victims.

I. FAMILY, ACQUAINTANCES OR FIDUCIARIES

Financial exploitation can range from stealing small amounts of cash to inducing the person to deed over his house, car or other assets, or completing a will under duress. Incapacitated or dependent adults are particularly susceptible to exploitation by someone they know, whether it is a family member, caretaker, friend or neighbor. Factors such as trust, accessibility and sometimes the increasing dependency of an adult can open the door

to exploitation. While elders, for example, can be dependent on their children, unemployed or substance abusing adult children can also be financially and emotionally dependent on their parents, which raises the risk of exploitation. Fiduciary relationships often involve incapacitated adults with caregivers who have been bestowed with extraordinary powers over these individuals.

It is important to remember that **most** family members and friends provide vital help to incapacitated and dependent adults. Without this help many adults would not be able to remain at home or would face hardship and risk of injury. Financial institution personnel should continue to encourage the elderly and other adults in need of assistance to accept help from trusted friends and family, while also watching for instances where these individuals are taken advantage of by people close to them.

Mrs. W., a partially blind 88 year old widow, was befriended by a man named Bill who installed a security system costing over \$2,000, a system she didn't know how to use. Bill then offered to help her with paying her bills. Over a period of several months, both Bill and his wife befriended Mrs. W.. Bill's wife would stop over and fix her hair. A neighbor discovered that five months of bills had not been paid, and that checks were missing. The police were called and Adult Protective Services contacted. With Mrs. W.'s permission, Adult Protective Services enlisted both her financial institution and her neighbor to help protect her from further loss.

Mrs. W.'s financial institution provided a preliminary handwriting evaluation, records and video camera film revealing that Bill had Mrs. W. sign \$9,500 worth of forged checks. It was also learned that Bill had withdrawn \$10,000 from another account and set up a Security Account in both names. With the assistance of a private attorney, \$2,700 was recovered from this account. Action was also taken to prevent the perpetrator from selling Mrs. W.'s house. He had convinced her to name him in her will and was attempting to sell her house while she was still living there. Mrs. W. continues to live at home, and her neighbor is now helping her with paying bills.

1. FOUR TYPICAL SCENARIOS

Although new methods of financially exploiting incapacitated or dependent adults are always being devised, the following situations illustrate adults, often elders, who are particularly at risk.²

A. THE FINANCIAL PRISONER

The adult who is physically or emotionally dependent on a family member, friend or caregiver may become a "financial prisoner." Over a period of time, the adult gradually comes to depend on the family member or friend for virtually every aspect of her well-being. At the point where the adult acquiesces to help with her finances, the exploiter may be tempted to make use of her money for his own needs, often rationalizing that this will "Someday be my money anyway." Often the exploiter is as dependent on the victim's income as the victim is on the exploiter's assistance. The victim (who otherwise appears rational and lucid) seeks to protect the exploiter from those who would expose his breach of trust, especially when it is a family member, while also attempting to deny that he would do such a thing. The victim is a prisoner in a dysfunctional interdependent relationship. See Section V for a more detailed discussion on why victims may deny abuse or financial exploitation to others.

B. THE SLIPPING ELDER

This victim may find it increasingly more difficult to manage his finances, and will turn for help to someone he trusts. "Slipping" may be due to physical incapacity such as difficulty getting down to the financial institution or writing out

checks, or an elder may realize his mental functioning is declining. Often the delegation of financial responsibility is not discussed. The exploiter simply starts helping with the victim's finances. The exploiter may add his name to the elder's accounts, with the excuse of needing access to the elder's money in order to pay bills. Sometimes the elder agrees to a Power of Attorney, or this may be obtained unethically at a point where the elder is no longer capable of deciding who should be handling his finances.

C. THE CONFUSED ELDER

The elder is clearly confused before family or friends become involved. A family member may hire an attorney to assist with obtaining the legal mandate to take over the elder's finances. Although more unusual, court appointed fiduciaries (such as Conservators or Guardians) may use their appointment as an opportunity to dip into the elder's funds. Although courts most often appoint family or others known to the incapacitated adult as fiduciaries, there is little or no screening, or ongoing oversight and accountability by the courts concerning how that adult's money is used.

D. THE BEREAVED WIDOW(ER)

These cases involve persons of long marriages whose spouses ran the family finances. The spouse dies, leaving the survivor to cope with the emotional devastation of being left alone, coupled with the anxiety and confusion of having to deal with his or her finances. For such persons, dealing with financial institutions, creditors and investment counselors is nightmare. The help offered by the exploiter is a welcome relief

Mrs. B. lives with her sixty year old, self-employed, son John. Mrs. B. became bedridden. She could no longer be left alone during the day and needed more care than John could or was willing to provide. John refused to allow health aides to help Mrs. B., claiming that she could "get up and wash herself if she wanted." Mrs. B. wanted to move into a nursing home. John, who had been granted Power of Attorney, argued that Mrs. B. could not be moved, but must remain at home because she "had no money."

A visiting nurse reported this as a case of neglect to Adult Protective Services. Working in cooperation with her financial institution, with Mrs. B.'s permission, the caseworker found that Mrs. B. had over \$350,000 in assets. John was unwilling to use his mother's money for her care. He appeared afraid of depleting the estate he expected to inherit.

John still denies his mother's needs. The case worker is working to get his Power of Attorney overturned. She has also arranged for Mrs. B. to have home health care. A court order obtained by Adult Protective Services prevents John from interfering with his mother's care. Mrs. B. will enter a nursing home shortly, at her own request.

2. WAYS ADULTS ARE EXPLOITED

Although the nature of their relationships and particular methods they employ may differ, family, acquaintances and fiduciaries engage in the same basic exploitative conduct.

A. MISMANAGING INCOME OR ASSETS

This involves either the willful or non-willful misuse of the victim's finances.

The willful misuse of an incapacitated or dependent adult's money happens without the victim's knowledge. For example, a father allowed his son to become a cosigner on a joint account to help him pay his bills. The son did pay some bills. He also wrote out large checks to cover his own expenses. The father then discovered his money was gone.

In non-willful misuse, the caregiver may believe she is using the victim's money appropriately or may not understand financial transactions. For instance, a fifty year old mentally retarded woman cashed

her mother's social security checks and gave the money to friends.

B. SIGNING CHECKS OR DOCUMENTS WITHOUT THE VICTIM'S CONSENT

Forging, altering, and cashing checks or withdrawal slips to obtain money from the victim's checking or savings account is a typical form of misconduct. For example, the victim signs a blank savings withdrawal slip and the perpetrator later fills in the amount of the withdrawal, a sum much larger than the victim would have allowed.

The exploiter may also forge the victim's name on stocks, bonds, ATM or credit card applications, titles and deeds to liquidate or gain control of the victim's assets and estate.

In these situations the victim has not consented to the financial transactions made in their name.

It is often wrongly assumed that elders who choose to give away money to their own financial detriment are being exploited. Older persons may want to help family, even

The Maine Reporting Project for Financial Institutions: Fighting Financial Exploitation

when those decisions might be considered by some to be poor choices (for example, repeatedly bailing out a cocaine addicted granddaughter). Competent adults of all ages have the right to make their own choices.

Adults must have the mental capacity to freely choose to make gifts, however. Family members may claim that the adult who lacks mental capacity would have given the money freely when "they were in their right mind." This is not valid consent.

Likewise, individuals acting as Powers of Attorney, Conservators and Guardians, all of whom act as fiduciaries, may not give themselves gifts from an adult or otherwise use the money or property for personal gain. For instance, a son acting as Conservator for his mother, an elder with liquid assets in excess of \$450,000, wrote himself checks -- "gifts" -- in amounts of \$1,000 to \$3,000. He was financially exploiting his mother since the money was used for his own personal gain, not for her well-being.

The Power of Attorney (POA) for Mrs. A. resided in Florida, living off her money and leaving her without food. He had boasted to friends about "taking this old lady for a ride." A home health nurse discovered phone shutoff notices and eviction papers due to unpaid rent. A report was made to Adult Protective Services.

The Customer Services Representative of a large financial institution helped the investigation by informing Adult Protective Services that the POA had opened a joint account with Mrs. A. and that statements were sent to Florida. Copies of statements were provided by Security on receipt of a letter requesting this information, signed by the elder and notarized by the financial institution. It was learned that the POA had recently made 12 ATM withdrawals, overdrawing Mrs. A.'s account. Mrs. A. was also regularly billed by the financial institution for bad checks. The POA had stolen over \$14,000 in Social Security and SSI checks over two years.

Attempts to contact the POA by phone and mail were unsuccessful, but did result in payment of five months of rent. The financial institution held Mrs. A.'s SSI check, and closed out the account at her request, and without POA involvement. Adult Protective Services assisted Mrs. A. to open a new account at another branch and a report was filed with the District Attorney.

C. CHARGING EXCESSIVE FEES FOR RENT OR CAREGIVER SERVICES

An incapacitated or dependent adult may be charged excessive fees for rent, transportation, meals, laundry or other caregiver services by relatives, "friends" or neighbors. The victim may live with family, or have made a deal with a caregiver to move in and provide assistance in the victim's own home. For example, an elder moved in with her daughter and was charged \$2,500 rent per month for a single room and shared living space. In another case, an

elder was charged \$35 a week by a neighbor to pick up a single small bag of groceries.

D. THEFT OF MONEY OR PROPERTY

Money or property taken without the victim's prior knowledge or consent is exploitation regardless of the amount taken. For example, a son taking \$50 of his mother's cashed Social Security check each month from her bureau drawer, without her consent, commits exploitation by stealing.

Miss G., aged 92, had been hospitalized for a year due to a fractured hip and bedsores. A neighbor, who had been handling her finances during this time, died.

Miss G. agreed to the neighbor's 23 year old daughter, Loren, being named on her accounts - Loren was paid \$50 a month for her help. When Miss G. discovered Loren had been writing checks for her own purchases, she called Adult Protective Services wanting to press charges for the theft of \$3,000 -- and to have her money returned.

Miss G.'s financial institution, with her consent, assisted with the investigation by providing copies of missing statements and 29 canceled checks demonstrating the personal use of the elder's money by Loren. As this was a joint account, the Branch Manager stated that the financial institution could not refund the money. Although the District Attorney would not prosecute, the APS caseworker met with Loren, her father, and the elder, Loren's family agreed to repay money taken in return for a written statement from Miss G. that she would not pursue legal action. The caseworker also arranged for Miss G.'s nephew to assist with future bill paying.

When Joel and Tommy were evicted from their apartment, they moved in with their mother Mrs. F., a frail 72 year old widow. Mrs. F. lives alone in public housing. She is entirely dependent on her small Social Security check, which she would take to her financial institution and cash as soon as it came. Joel and Tommy began escorting her to and from the financial institution to "keep her from getting robbed." On returning home they took the money, claiming to need it to buy food. Most of the cash was spent on drugs.

When Mrs. F. tried to resist her children, pointing out that she needed to pay the rent, they began to threaten her. They told her that if she went to sleep she would "never wake up." The brothers took turns watching her, trying never to leave her alone. For weeks Mrs. F. sat up in a chair all night, afraid to doze off. A neighbor found Mrs. F. outside the apartment one day, exhausted, undernourished, and crying. The neighbor filed a report with Adult Protective Services.

Mrs. F. was initially reluctant to admit her much loved sons were abusing her. She eventually agreed that the case worker could help her to open a checking account at her financial institution, and direct deposit was arranged. The building manager agreed to bar the brothers from her building. Employees of the financial institution, asked to look out for Mrs. F.'s safety, soon reported that Joel continued to meet Mrs. F. at the financial institution and appeared to be threatening her. Mrs. F. finally agreed to obtain a restraining order against Joel.

Mrs. F. was later able to reestablish a relationship with Tommy, who obtained treatment for his substance abuse and entered job training. They meet outside her apartment several times a year. She is no longer being financially exploited or abused.

**E. OBTAINING MONEY OR PROPERTY BY
UNDUE INFLUENCE,
MISREPRESENTATION OR FRAUD**

Although the incapacitated or dependent adult may "give" the perpetrator money or property, it is exploitation if the choice is motivated by fear, deception or undue influence. **Undue influence** may involve the victim transferring title to property (such as a home, vehicle, savings account, stocks or other asset) because of manipulation, intimidation or threat of force. Physical violence may be used but the use of coercion includes the withholding of food or medication, isolating or confining the victim, or depriving the victim of the company of loved ones. For example, a daughter may threaten to place her mother in a nursing home, and not allow visits with her grandchildren, unless she is given access to her mother's life savings.

In addition, there is a presumption of undue influence under Maine law in any transfer of real estate or major transfer of personal property (defined as 10% or more of a person's estate) if: a) the transfer was made for less than full consideration by an elderly person (anyone 60 or older); b) the elderly person is dependent on others; c) the transfer was made to a person with whom the elderly person has a confidential or fiduciary relationship; and d) the elderly person was not represented by independent counsel. If the person to whom the transfer is made fails to rebut the presumption, the elderly person, that person's legal representative or the personal representative of the estate is entitled to avoid the transfer. See Appendix C: Improvident Transfers of Title (Title 33 M.R.S.A. §1021 et seq.).

Misrepresentation or fraud occurs when the suspect induces the victim to give or sign over money or other assets by

misrepresenting the intent of the transaction. Relatives or caretakers sometimes tell elders that they will provide lifetime care if the elders will sign over the deeds to their homes to them.

For example, an elderly woman signed the deed to her house over to a friend, with the agreement that she would be able to remain at home until she died. The "friend" sold the house, forcing her to move to a rest home.

More frequently, caretakers tell elders or other vulnerable adults that they need to write checks for food and medical treatment when, in fact, the checks are used for the caretakers' own benefit or, as is often the case, substance abuse addictions. For example, a co-owner of a joint account withdrew substantial amounts of money without the victim's knowledge. The victim believed his son had asked to be named on his account to help with bill paying and had not consented to the personal use of the money by his son.

II. SCAM ARTISTS

There are numerous situations in which incapacitated or dependent adults, often elders, are the victims of scams by strangers. All scams fall within three basic categories: (1) person-to-person confidence schemes; (2) mail fraud; (3) telefraud; and 4) internet fraud. This part of the materials describes some of the most widely practiced confidence schemes that employees are likely to encounter.³

1. WHY ELDERS ARE VICTIMIZED

The victimization rate for fraud is very high among older people. Although adults of all ages are swindled every day, con artists often select older people because some may seem more trusting, appear to be lonely, give the impression that they are easily

confused by fast talk, or appear to have time to listen to the "pitch" of the con artist.

Many older people also have relatively easy access to their savings, whereas many younger people have committed their money to raising families, educating children, or paying for their homes.

2. WHY FRAUD AND CONFIDENCE SCHEMES SUCCEED

No individual is immune to a con artist, and people of all ages and backgrounds have been swindled. Con artists are so successful for several reasons:

A. CON ARTISTS ARE VERY SKILLFUL

Many have the abilities of professional actors and can convincingly present themselves to their potential victims.

B. COMPLACENCY

Most people believe they are too clever to be swindled. Older adults can become complacent if they believe their years of experience will help them detect a con artist.

C. HARD TO DETECT

Con games are very difficult to detect. There are two reasons for this: First, frauds are committed without violence. Unlike a shooting or assault, people (even police) in the vicinity will normally be unaware that a fraud is being committed.

Second, frauds are seldom reported to authorities. Reporting rates for confidence crimes are estimated at between three and 8%, the lowest of any major crime. There are several reasons for low reporting. Many victims are embarrassed to report that they have been swindled; some are not aware of their victimization; and others may conclude that there is nothing the police can do to

catch the culprit and recover their money or other assets.

Sometimes the attitude of professionals contributes to the low reporting rates. According to Detective Dennis Marlock of the Milwaukee Police, an acknowledged expert on confidence crime: "Some [professionals] consider the term 'confidence crime victim' to be nothing more than a euphemism used to describe someone who is ignorant, greedy or just plain stupid. In fact, con artists know that the more intelligent the potential victim, the higher their personal status -- the easier they are to deceive. Thus, nobody is immune from getting fooled by a confidence crime, and employees, security and law enforcement officials need to respond with sensitivity and understanding when they encounter a victim."

D. DIFFICULT TO PROSECUTE

Con games are very difficult to investigate and prosecute. First, people who swindle others cannot be easily traced. Con artists usually do not have ties to the communities in which they operate, and their lifestyles are characterized by mobility and frequent name and identification changes. That is why it is so critical for employees and security to intercept cons as quickly as possible by alerting law enforcement.

3. FOUR ELEMENTS OF A FRAUD PROMOTION

A fraud consists of four elements, all of which must be present if the scheme is to succeed. These elements are:

A. CRIMINAL INTENT

The con artist develops an idea for a scheme that includes the criminal intent to defraud; for example, convincing people to invest in a phony gold mining venture.

B. DISGUISE OF CRIMINAL INTENT

The con artist must then disguise his criminal intent by producing (in the example of the phony gold mine) official-looking documents, such as an assay report or financial statement.

C. EXPLOITATION OF HUMAN TRAITS

As stated previously, con artists are experts at manipulating certain human traits that will influence people to part with their money: goodness, gullibility, greed, or fear. For example, it is often said that there is a little bit of larceny in all of us. Swindlers learn to prey upon this and other human motivations.

D. VOLUNTARY PARTICIPATION OF THE VICTIM

The con artist's objective is to induce people to participate voluntarily in the scheme.

4. DEFEATING FRAUD

The last two elements described above reveal areas that prevention programs can exploit to defeat frauds.

Voluntary participation of the victim.

The con artist's weakness regarding this element is that fraud is a crime over which potential victims can exercise total control. People can always say "no" to a con artist. The challenge for financial institutions is to educate customers about con games to the point where they recognize a swindle taking place.

Exploitation of human traits

To exploit the human traits of goodness, gullibility, greed, and fear, the con artist must resort to a pattern of promises or claims that can be readily identified. These can serve as warning signs that a con game is taking place. When people become aware of these warning signs, they will be able to detect swindles and "just say no."

PERSON-TO-PERSON CONFIDENCE SCHEMES

It is not possible to describe all the different types of confidence games. It is possible, however, to cover the most common and successful.

1. FAKE CHECK SCAM

In the fake check scam, the con artist gives a fake check to the victim who is conned into cashing the check and returning some, or all, of the proceeds to the con artist. The check may represent overpayment for goods or it may be described as advance money for use in claiming lottery proceeds. Because the check is fake, the victim must return to the bank any money drawn against the check and given to the con artist. The fake check scam takes advantage of the federal guidelines for making funds deposited by checks available to consumers. Under certain circumstances, the law requires that financial institutions make funds available to depositors before the check has been cleared or rejected. Financial institutions can play a large role in preventing this type of fraud. Vigilant tellers can identify suspicious checks and inform customers that funds may become available before a check is actually rejected by the payment system.

2. THE BANK EXAMINER

This swindle usually begins with a telephone call. The caller identifies himself or herself as a bank examiner, or some other official sounding title. This "examiner" tells the selected victim that some bank accounts show large withdrawals. He suspects a dishonest bank employee and wants the victim, as a valued customer, to help trap the thief.

Phony examiners may ask victims to meet them somewhere near the bank, where they will show some official-looking identification. The victim will then be asked to go to a particular teller at their bank and withdraw a certain sum of money, which is to be delivered to the "examiner," who may go through the motions of recording the serial numbers from the bills. The "bank examiner" will usually give victims a receipt and inform them that the money will be immediately redeposited. Some may seem to return the money immediately; however, they will switch envelopes and give the victims an envelope that contains only paper.

This scheme is so successful that there are many versions of it. The story may be that a teller is suspected of stealing money from the victim's account and that the bank has set up a new account in the victim's name. The phony examiner asks the victim to empty the old account, then allow the examiner to do a "controlled" redeposit of the victim's money into the new account to see whether the dishonest teller will try to transfer money from the new account back into the old account. Confusing? It's meant to be. The idea is to confuse potential victims with fast talk and, at the same time, gain enough of their confidence to prevent them from asking questions and thoroughly thinking through the proposal.

Another twist to this scam is the story that a teller is suspected of giving counterfeit money to depositors withdrawing cash, then stealing the same amount from their accounts. Victims learn of the swindle when they go to their bank and find that their money has not been redeposited and that the bank officials are unaware of any investigation or any bank examiner.

3. THE PIGEON DROP

This con game often begins when a pleasant person (usually a woman) approaches the intended victim and starts a conversation. For example, she may ask for something as simple as directions. She explains that she has just inherited some money or received money from an insurance policy and is looking for an apartment. A casual conversation follows and, at this point, all seems innocent. Soon afterward, a second person approaches and asks whether anyone has lost a package. As no one has lost a package, and no address or name is on it, the three agree to open the package. They discover a considerable sum of money and, usually, a note. The note is very brief and leaves the impression that the money in the package has been obtained from gambling, drugs, or some other illegal means.

A discussion usually follows about what to do with the money. Turning it in to the police is one idea, but the two con artists convince their victim that there is no way for the police to trace it. One of the swindlers suggests that a friend, a lawyer, can offer advice about what to do with the money. Following the "recommendation" of the "lawyer," or by mutual consent, the three decide to hold the money with the lawyer, or in an account in all three names, for a certain period before dividing it. The cons then question each other about the possibility that one of the group will try to withdraw their share of the money during the time it is to be held. Both cons "prove" to their victim that they have money and will not need to draw on the money just found.

It then becomes the victim's turn to show that she also has money immediately available. Because the victim will probably not be carrying a large amount of cash, she is asked to withdraw a certain amount, \$2,000, for example, from her financial institution and let the other members of the group see it before returning it to the financial institution.

When the victim brings the cash to the two con artists, they ask to count it. They take the wallet or envelope containing the victim's money and, while one counts the money, the other distracts the victim and the envelopes are switched. The victim gets back only a wallet filled just with paper cut to the size of money.

Mr. B. walked into the financial institution with a smile on his face as he approached the teller window. He presented a check for \$4,000. He commented that he was happy because he was about to make an excellent investment. The teller knew that the financial institution was concerned about a rash of fraudulent investment schemes in the community. When questioned politely, Mr.B. stated that he had already seen the cash he would be given upon his "good faith" investment.

Mr. B. was about to become the victim of a pigeon drop. The teller said that she needed to check briefly with her manager to approve the cash withdrawal. She alerted a security officer who immediately notified law enforcement. Officers responded and, after further investigation, placed the suspect and his accomplice under arrest.

4. FAKE ACCIDENT PLOY

In the fake accident ploy, the con artist tells the victim, either over the phone or in person, that the victim's child has been seriously injured and needs money for medical treatment. Another variation has the con explain that the child is in jail and in need of bail money.

Once the victim is hooked on the story, the con escorts the victim to the financial institution for a large withdrawal. The con takes the money and, through various excuses and explanations, leaves, never to return.

5. THE HOME REPAIRMAN

Usually, the "home repairman" will arrive at the victim's door and inform the homeowner that her driveway, siding, or maybe the roof is in very poor or even dangerous condition. He explains that he has just finished a job nearby and has extra material from the job that he could use to fix the problem. He claims he can do this very inexpensively because he won't have to charge for materials and nobody in his company will know the difference.

If any work is done, it is usually of no value. For example, the cons may put black oil on a driveway that temporarily looks good, and leaves with the payment. Often the repairs are not even needed. The entire operation is

just a way to get money by convincing victims that they are getting something at a reduced cost.

6. THE CITY INSPECTOR

The potential victim answers the door to find a "city inspector" who flashes some identification (and probably a big smile) while informing the homeowner that the "inspector" is required to check the wires, the pipes, or something else for a possible problem.

The "inspector" soon finds a "serious problem" and says it is a code violation that has to be fixed immediately. The "inspector" then mentions who can repair the problem immediately. Also, because the "inspector" knows that the job will be done right, he won't have to discontinue the service or check the work.

If the homeowner falls for this scam, the "inspector" will call the repairman and "conveniently" find that he is available. Because of the urgency of the situation, however, it will cost a bit extra, and the repairman will usually want cash. The victim soon finds that "a bit extra" is a lot of money, especially for work that was probably not needed in the first place.

7. OFFERS TO NEWLY WIDOWED PERSONS

Some con artists use obituary columns to find victims. Recently widowed persons can be quite vulnerable to certain con games. Cons may claim that, before the victim's spouse died, he or she ordered a Bible or some other religious object. In memory of the deceased spouse, a widow or widower may be inclined to purchase the item, although it is probably vastly overpriced. Con artists also attempt to sell widowed persons such items as laminated obituaries, condominiums, insurance policies and land development schemes.

8. THE RUSE ENTRY

Some thieves use the skills of con artists to enter the homes of their victims. For example, two women may claim their car has broken down and they need to use the phone to call for help. While one distracts or occupies the victim with requests to help find phone numbers or get a glass of water, the other slips into other rooms and steals money and valuables. There is also a variation on the home repair scheme where one of the "workmen" will come up with an excuse to enter the home and, while he distracts the occupant, his accomplices will go through the house and steal valuables.

MAIL FRAUD

Mail fraud includes conducting phony contests and sweepstakes; selling misrepresented or nonexistent investments; touting worthless or dangerous medical cures; soliciting money for phony charities; promoting participation in fraudulent work-at-home schemes; and selling "dream vacation" packages that turn into nightmares. This is not an all-inclusive list, but it represents the extensive variety of mail frauds that can victimize senior citizens

and younger people as well. Descriptions of a few of the most active fraud areas follow:

1. FRAUDS DIRECTED AGAINST CONSUMERS

A. THE FAKE CONTEST

This fraud often starts with a notification to someone by phone or mail that they have won a prize or some type of contest or sweepstakes. In reality, there is no contest and no worthwhile prize. "Winners" are usually asked to send money to cover "handling charges." After they send their money, victims usually hear nothing further about that particular contest or prize. However, they are often later deluged with similar mailings containing yet more "congratulations" and asking, of course, for more money.

In other swindles of this type, victims may receive prizes that are worth far less than the "handling charges." Fake vacation winners often receive only books of discount tickets, worth a fraction of the money they paid out.

B. DEBT CONSOLIDATION

Although there are many legitimate services for debt consolidation and counseling, there are also many dishonest individuals in this line of work. These people usually demand large up-front fees and charge high interest rates that leave victims in far worse financial condition than before their debt consolidation efforts.

C. RETIREMENT ESTATES

This type of operation has become widely known in recent years, but many people are still victimized. Land that appears beautiful in an enticing ad is offered for an exceptionally low price. The cost of the actual land (not the land in the pictures) is usually far higher than its market value.

TELEMARKETING FRAUD

2. BUSINESS OPPORTUNITY FRAUDS

Most of the frauds of this type that attract older people involve work-at-home schemes. Advertisements for such "enterprises" often appear in local "Neighborhood Shoppers" publications. The ads usually promise a guaranteed weekly income of several hundred dollars requiring little work or experience.

The U.S. Postal Inspection Service has reported that one newspaper ad for a fraudulent work-at-home scheme drew over 200,000 inquiries. To qualify for "employment," respondents had to send in small registration fees and perform sewing tasks to demonstrate their skills. No one qualified and none of the money was returned.

3. MEDICAL FRAUD

A. FAKE LABORATORY TESTS

The Postal Inspection Service discovered one laboratory that conducted more than 15,000 fake tests for cancer. The cost for each "test" to those who answered the solicitation was \$10. Not only was the profit considerable for the swindlers, the danger was extreme for those who may have incorrectly believed, because of the "test," that they did not have cancer.

B. MIRACLE CURES

There is always someone, somewhere, who claims to have discovered a cure for any condition. These claims are often advertised in newspapers or magazines, and the quackery is completed through the mails when victims send in their money.

1. WHAT IS TELEMARKETING FRAUD?

Telemarketing fraud, or telefraud, involves obtaining money from victims in exchange for services or products that are either never furnished or priced far above their true market value. Telemarketing fraud accounts for \$10 billion in investor losses annually according to the North American Securities Administrators Association.

2. HOW DOES TELEFRAUD WORK?

A. THE BOILER-ROOM

Telefraud operators often employ people to make phone calls from banks of phones. These are called "boiler-room" operations.

Boiler-room callers use well-rehearsed, high-pressure sales pitches to convince customers to buy overpriced products, invest in fictitious enterprises, participate in contests to win worthless prizes, or contribute to phony charities.

B. WHAT IS THE VICTIM LIKELY TO HEAR DURING ONE OF THESE CALLS?

Telefraud solicitations are cleverly worded and contain many different claims to entice their victims. The longer prospective victims allow callers to go through their scripts, the more difficult it is for many victims to resist. Before the victim knows it, he or she may be "dancing." This is a term some boiler-room operators use to refer to victims who start to show some interest in the products being offered.

Common approaches used by telefraud "salespeople" include the following: "Your recently departed (husband or wife) would have wanted you to (buy) have this"; "You have been specially selected for this offer";

"You'll get a wonderful free bonus if you buy our product"; "You've won a valuable prize"; "This investment is low-risk and pays higher interest than you can get anywhere else"; "We will guarantee your investment or buy it back"; "You'll have to make up your mind right away"; "Just put the shipping charge on your credit card."

To confuse their victims, many boiler-room callers ask for victims' credit card numbers, assuring them that if they do not like the products or decide to return the items, they can cancel the sale and no money will have been lost. Others claim they need the credit card number to verify the victim's address or confuse victims by asking for the numbers at the same time they ask for the victims' addresses. The victim's money is usually lost the minute the credit card number is released.

Another ploy is to ask for the victim's checking account number and social security number. Armed with the checking account number, the con can generate "paper drafts" on the account. The account can be emptied by the time the victim receives a bank statement.

C. DOES REPEAT BUSINESS WORK?

Some con artists keep records and lists of those they have previously conned. Because the people on these lists have been successfully swindled in the past, they are considered "leads" for future swindles. These lists are sold to boiler-room operators by people called "loaders." Loaders exist because some people do not learn from their past mistakes.

D. THE "900" NUMBER SCAM

A technique used by telephone swindlers is to entice victims into calling them on 900 numbers. The swindle begins when the cons mail out thousands of letters or postcards to

entice people into believing that they have won a contest and a prize of some type. Recipients are told that they must call a 900 number to claim their prize. The solicitation letter may include a statement that callers will be charged for use of the 900 number; however, this information is usually printed in very small type.

Victims who place such calls usually hear a recorded voice that strings them along for several minutes during which phony "checks" are made to verify their identification numbers. Ultimately, there are no prizes. If callers listen and wait through the entire "yes, you have won, no, you haven't won" pitch, they can be charged \$30 to \$40 for the calls, only to learn that they have "won" a consolation prize of coupon books good only for the purchase of shoddy merchandise from the promoter's catalog.

E. "RECOVERING YOUR MONEY" SCAMS

A particularly insidious scam entails an offer to repeated victims to recover the money they have lost to confidence crimes. Victims are typically asked to pay a fee to an apparently respectable "loss recovery" organization. The victim, who is usually embarrassed to have been "taken" so many times, is reassured by the confidentiality promised by the organization. Of course, no attempt to recover money is made. The enterprise only exists to con victims yet again.

New regulations governing telemarketing, effective December 31, 1995, have been issued by the Federal Trade Commission (FTC) to safeguard consumers from telefraud.

These regulations require telemarketers to state immediately that they are making a sales call, and quote the price of the product or services.

Telemarketers are also forbidden to debit consumers' accounts without permission, and customers may request that the company cease to call them. Violations of these regulations are punishable by fines, and states are allowed to institute even stronger laws to discourage telefraud.

F. CHARITY SCAMS

Some charities spend over half their income to pay professional fund-raisers. Other charities never give any of the money raised to the worthy causes they supposedly represent. One way to check is to contact the Council of Better Business Bureaus in Arlington, Virginia (703) 276-0100 for information on national charities and local Better Business Bureaus for assistance on regional and local campaigns.

INTERNET FRAUD

The internet and other advances in technology have changed the way criminals engage in fraud. One common scam is known as "phishing." The "phishing" scam begins with an e-mail, purportedly from the victim's financial institution asking the victim to update a password or re-submit personal financial information. The victim's financial institution's logo and other identifying characteristics are presented in a manner that makes the e-mail appear legitimate. The victim is urged to respond immediately through a link to a phony website. The phony website appears to be a website of the victim's financial institution. When the victim provides passwords, account numbers or other personal information, the information is used to gain access to accounts and use of the victim's credit card number. Individuals should never provide personal information, unless they initiated contact and are sure they are dealing with their financial institution.

An elderly woman, Mrs. L, came into the financial institution and withdrew \$500 from her account. She appeared later that same day asking to withdraw another \$1,500. The teller politely asked Mrs. L. why she needed to carry such a large amount of cash, especially given her earlier transaction. Mrs. L. explained that she had spent \$500 to have her driveway repaired earlier in the day and then had been visited by two "sewer inspectors" from the town. The inspectors said that she owed the town \$1,500 for maintenance to her sewer hook-up.

The teller suggested that Mrs. L. talk briefly with security. The security officer recommended that Mrs. L. write a check for town services. Mrs. L. then said, "But they are waiting outside for me and insist I pay cash." The security officer immediately called police. The officers arrested the bogus "inspectors" after a brief chase. It turned out that they were working with the individuals who had performed the shoddy and unnecessary driveway repair. Those driveway accomplices were not apprehended, but the "inspector" con artists were prosecuted by the District Attorney.

DETECTING FINANCIAL EXPLOITATION

ORIENTATION OF EMPLOYEES: BE VIGILANT!

More important than skills or techniques, awareness is the key to diagnosing financial exploitation. When financial institution personnel understand how prevalent exploitation is and, consequently, how necessary it is for them to be vigilant for the often subtle signs that an incapacitated or dependent adult is being exploited, they will immediately be in a position to detect instances of exploitation. Like the person removing sunglasses in a dark room, employees who become aware suddenly see cases that they would not have noticed previously.

THE SYMPTOMS OF FINANCIAL EXPLOITATION

Employees of financial institutions, familiar with clients who come in regularly, are in a position to notice uncharacteristic banking activities or suspicious interactions between clients and those who accompany them to the their financial institution.⁴

1. SUSPICIOUS BANKING ACTIVITY

A. UNUSUAL VOLUME OF ACTIVITY

Accounts may be changed from one institution to another or there are several withdrawals in one day for large amounts of money.

B. BANKING ACTIVITY INCONSISTENT WITH CUSTOMER'S USUAL PATTERNS

Examples of this would be drastic changes in the types and amounts of withdrawals from a customer's account or withdrawals

from automated banking machines (ATM) when the customer is bedridden.

C. STATEMENTS AND CANCELED CHECKS ARE NO LONGER SENT TO THE CUSTOMER'S HOME

This may mean that someone is intercepting the customer's mail.

D. SUSPICIOUS SIGNATURES ON CHECKS OR OTHER DOCUMENTS

This is especially true when the customer cannot write, but there are signatures on documents.

E. IMPLAUSIBLE EXPLANATIONS ABOUT THE CUSTOMER'S FINANCES GIVEN BY THE CUSTOMER OR SUSPECT

The customer appears confused, or unaware, or does not understand financial arrangements that have been supposedly made on the his or her behalf. Specifically, they may complain that they do not understand recent changes in their financial status, such as checks bouncing, or may express their intent to give large monetary gifts inappropriately.

F. SUDDEN INCREASE IN DEBT

The customer may incur loans, credit card or reserve credit debts, or second mortgages; yet, may have no understanding of why these transactions took place or where the money went.

2. SUSPICIOUS BEHAVIOR OF THE ACQUAINTANCE, RELATIVE, FIDUCIARY OR STRANGER

A. ACQUAINTANCE/RELATIVE RELATIONSHIP

As elders and other adults experience decreased mobility (personal mobility and loss of driving), they become dependent on others to assist and sometimes take over their financial matters. Although this increases the opportunity for abusive practices, acquaintances may have a need to conduct legitimate financial business and handle funds as needed for the care of the adult. The presence of the following activities justifies closer examination, however:

Acquaintance interest. Acquaintances may seem overly interested in the customer's financial situation, especially when they have no means of support or have recently ingratiated themselves to the customer, or have made promises to provide life long care and so forth.

Isolation. The acquaintance isolates the customer from friends and other family.

Domineering behavior. The acquaintance controls the customer, not allowing him or her to speak, answer questions or explain why transactions are being made. The customer is not allowed to see financial records.

Recent changes in ownership of the customer's property. The customer's possessions are missing (especially valuable items like silver, art and jewelry) or are being cared for in a way inconsistent with the customer's estate.

Document changes or lack of comprehension. A deed, will or other legal document, such as a Power of Attorney, is

changed without proper explanation or is signed by an incapacitated person who lacks an understanding of its legal significance.

Absence of documentation about financial arrangements. Family members may claim to be acting for a relative. They should, however, be able to produce documentation when asked.

Quality of care concerns. The quality of the customer's care is noticeably deficient. Sometimes this may be indicated by an acquaintance who is excessively concerned over the cost of caring for the adult or reluctant to pay bills with available funds (for example, nonpayment of bills leading to eviction notices or threats to discontinue utilities).

B. FIDUCIARY RELATIONSHIP

The signs that apply to the acquaintance relationship are equally important considerations when a fiduciary is involved. Additional indicators of possible exploitation are:

Failure to produce documents. The individual claims to have responsibility for the customer's finances, but cannot seem to locate the appropriate papers.

Absence of concern about the customer's wishes. Although fiduciary status allows the acquaintance to exercise certain powers, the actions taken by the fiduciary must act in an adult's best interests and consider, where possible, that adult's wishes.

Handling the estate in a manner not consistent with the customer's norm. A sudden change, for example risky investments or stock market transactions when the customer previously never played the market, may indicate that the fiduciary does not respect the customer's concerns.

C. STRANGER RELATIONSHIP

The fact that a stranger is involved (that is, a person with no family, social or legal relationship to the customer) in a financial transaction is, itself, a red flag that scam artist exploitation may be occurring. This is especially true if the transaction involves a large cash withdrawal or other significant financial undertaking, especially when inconsistent with the prior banking history of the customer.

SECTION III

RESPONDING TO FINANCIAL EXPLOITATION

When the financial institution notified Mrs. C. that her account was overdrawn due to her frequent use of an ATM card, Mrs. C. did not know what they were talking about. She claimed she did not know what an ATM card was. Mrs. C. had rarely left her house for several years due to her increasingly frail health. A visiting nurse reported this case to Adult Protective Services.

Mrs. C. gave Adult Protective Services permission to contact her financial institution. The investigation uncovered that Mrs. C. was being exploited by Alan, a neighbor's son. Alan had done chores for her as a teenager and had recently offered to clean her house.

Alan had asked Mrs. C. to sign an ATM card application when she was intoxicated. He took the signed application to the financial institution, claiming to be acting for her. The signature was confirmed by the financial institution signature card for her savings account, but the financial institution did not question Alan's claim or contact Mrs. C. to verify it. Alan retrieved the ATM card from the mail, made up a PIN number and began making almost daily withdrawals of \$100 to \$300. In three months he had depleted her life savings. Mrs. C. was no longer able to pay her medical bills.

Adult Protective Services and her financial institution helped Mrs. C. to cancel the ATM card. A report of theft was filed with the District Attorney. To date, Mrs. C.'s money has not been recovered. There is a warrant out for Alan's arrest.

A financial institution's response to suspected cases of exploitation should be consistent, fair and effective. In order for this to happen, professionals from the financial institution, Adult Protective Services and law enforcement must work together to investigate suspected cases in a way that protects incapacitated and dependent adults, while appropriately preserving their privacy.

This is the goal of the model protocol, or plan of action, outlined in this section. The protocol guides financial institutions in their internal response to suspected exploitation, reporting procedures, and release of information during investigations. It is

meant to serve as a guide, not the final word, and may be adapted to the specific needs and policies of the institution.

By formalizing procedures and responsibilities, the protocol will facilitate cooperation among financial institutions, Adult Protective Services and law enforcement. The protocol is only a foundation, however. The most important component of any strategy to reduce financial exploitation remains the commitment of the involved agencies to cooperate and develop productive working relationships.

The Maine Reporting Project for Financial Institutions: Fighting Financial Exploitation

The initial internal response should always be the same. Tellers or customer service representatives should report suspicions to security or designated managers. Security will assess the situation, decide whether the report should be made to Adult Protective Services or law enforcement, and make the report.

The system for reporting and investigating suspected financial exploitation differs with

the relationship of the suspect to the victim. Exploitation by members of the victim's family, acquaintances or fiduciaries is reported to Adult Protective Services. Exploitation by strangers to the victim is reported to law enforcement.

INTERNAL RESPONSE

The proactive employee can nip exploitation in the bud. When confronted by a suspicious situation the employee should perform the following actions in a polite manner to gain the customer's confidence and slow down the account withdrawal process.

1. LEARN THE REASON FOR THE TRANSACTION OR WITHDRAWAL

Inquire the reason for the large cash withdrawal or other suspicious transaction, especially if this transaction does not adhere to the customer's usual pattern of banking. What constitutes a large amount of money should be determined by the individual financial institution. Always have the customer, *not* the person accompanying them, explain the reason for the transaction. Most family members and acquaintances are acting in the customer's best interest. Only inquire directly about the reason for the transaction when there is a suspicion of exploitation. Ask questions casually as a part of normal friendly conversation with the customer.

Key questions:

Did someone from the financial institution, or someone claiming to have found a lot of money, ask you to make this transaction?

Are you sure you want to carry this much cash? Would it be safer to consider a different form of payment?

2. CHECK AUTHORIZATION AND DOCUMENTATION

Always check that the person claiming to be acting on behalf of a customer is authorized to do so. Signature cards *must* be checked, and telephone calls made to customers to verify their intent if withdrawals look suspicious.

Many financial exploiters misrepresent their position or powers. Family members or others may claim to have been given Power of Attorney (POA)⁵ on behalf of an incapacitated or dependent adult. This document must be verified.

POA's may not act outside the powers given by the adult. Powers are specified in the document, and a POA given to pay bills does not allow emptying an account.

Key questions:

Is the POA empowered to make this transaction?

Are these actions being taken on the adult's behalf?

Are they taken with the adult's consent?

A Power of Attorney may not be obtained when an adult lacks the capacity to consent.

Estranged family members sometimes wait until an adult is confused and disoriented before obtaining a POA. Then the family member may use the POA to impoverish the victim by taking over all assets. An adult who lacks mental capacity does not have the ability to choose who will act on his or her behalf. Well-meaning attorneys may draw up the POA at the request of a family member without ensuring that the adult has

the capacity to consent to the POA. Notarization of the adult's signature may occur without the notary making sure the adult understands what he or she is signing. If a previously competent adult becomes confused or disoriented, someone suddenly starts acting as a POA, and there is a sudden change in banking practices, the financial institution should file a report with Adult Protective Services.

3. CONFIDENCE CRIME AND FINANCIAL EXPLOITATION ALERT FORM

For large cash withdrawals, provide all customers with a confidence crime/financial exploitation (fraud) alert form and ask them to read and sign the document. (See Appendix D for sample forms.) Present the form as policy for all large cash withdrawals. Take the time to answer any questions they have concerning the document and read it to them if necessary. Be sure to point out that the purpose of the document is to help protect the customer. If the customer strongly objects to the form, refer them to security.

Time is the enemy of the financial exploiter, especially the scam artist. The longer the employee talks with the customer, the better the chance is that the exploitation will be prevented. The customer may recognize the fraud or, more commonly, the exploiter will become apprehensive and leave the scene.

4. GET PHOTOGRAPHIC EVIDENCE (IF POSSIBLE)

Photographic evidence is critical for identifying scam artists, who are persons unknown to their victims. A surveillance photograph may be the only way for law enforcement and the prosecutor to identify the perpetrator.

In cases of acquaintance or fiduciary exploitation, a photograph can effectively rebut a suspect's later claim that he never went to the financial institution to cash the forged checks or make the excessive withdrawals.

Always try to position the suspect so the surveillance camera gets a recognizable picture. Many exploiters attempt to stay out of camera range.

5. CONSULT WITH SECURITY

Call on senior officers or security and request that they speak with the customer concerning the transaction.

Justify concern: If the customer objects, emphasize that this precaution reflects the bank's commitment to protect customer funds by ensuring that withdrawals are free from fraud or other improper influence.

Do *not* state that your concern stems from the fact that the customer is elderly. Instead, state the factual reason for your concern. For example, note that there has been a sudden increase in the frequency and amount of money withdrawn by family members, or that the financial institution is aware of other customers targeted by scam artists.

6. DECIDE WHETHER TO INTERVIEW THE CUSTOMER

The financial institution should decide whether or not to interview the customer. This may depend on the financial institution's practices as well as on the particular circumstances.

A. WHEN NOT TO INTERVIEW

If you believe exploitation is occurring, and that an interview may result in harm or retribution to the customer, do not attempt to interview the customer prior to contacting APS or law enforcement.

Alerted suspects including family, caregivers, and fiduciaries, have been known to panic and clean out joint accounts, or complete transactions that result in further irreversible exploitation.

Financial institutions concerned about remaining anonymous in filing a report to APS may choose not to interview the victim but make the report based on statements by others or written financial institution records.

The identity of the reporter will always be kept confidential by APS, and financial institutions are encouraged to interview the customer to gather additional information. Financial institutions may, of course, choose to inform a customer of their intention to report a situation to APS. They do not have to, however, especially when the financial institution fears interviewing will “tip off” a customer to a source of a report, possibly with a negative effect on the customer/bank relationship.

B. IF THE CUSTOMER IS INTERVIEWED, INTERVIEW IN PRIVATE AND ALONE (IF POSSIBLE) ⁶

Speak to the customer in private without the suspect present if possible. The customer will probably not speak freely in front of a victimizer, or the suspect may intimidate the customer in order to keep him or her from revealing the exploitation. Unwillingness on the part of a companion to let financial institution personnel talk to the customer is a “red flag” that abuse may be occurring.

Financial institutions should establish their own guidelines in deciding the best person to speak with the customer. While some financial institutions prefer that security officers conduct all interviews, there may be situations when the teller or customer services representative would be a preferable choice. An adult who is a regular customer may have established a relationship with a teller, for example, and may find it easier to speak with her.

Other important considerations during the interview phase are:

Ask clear, non-threatening questions.

Few people, whether elderly or not, are willing to define themselves as “abused” or “exploited,” especially in a business setting. It is important to start with non-threatening questions that establish a caring relationship. Emphasize and validate the customers’ feelings. They may feel impatient, confused, fearful, embarrassed, or guilty about your inquiries. Do not blame the customer for what is happening. Point out that increasing numbers of people are being victimized.

Questions should be clear, direct and factually-based. For example, the question, “Do you feel that your companion is attempting to improperly obtain money from your account?” is likely to make anyone defensive.

Key questions:

Are you related to the person who accompanied you today? How did you meet him/her?

Is your daughter helping you with your banking these days? She has been coming in.

Do you plan to give some of the funds being withdrawn to this person?

Do you mind if we ask why you are giving this person such a substantial amount in cash?

Have you signed, or been asked to sign, any forms or documents lately that you don't understand?

Remember that adults are typically reluctant to reveal exploitation. There are numerous reasons why adults are reluctant to reveal that they are being abused, neglected or financially exploited. In situations where an acquaintance, a relative or a fiduciary is responsible, victims may be afraid to disclose an exploitative situation due to their embarrassment, shame, fear of retaliation, lack of understanding of financial or caregiving alternatives, concern that admitting they need help may result in their being placed in a nursing home, physical or mental limitations, and a variety of other feelings.⁷

Similarly, victims are extremely reluctant to report instances of scam artist exploitation because they find it hard to believe that, with all their years of experience, they were taken advantage of. They are frequently too embarrassed to report incidents.

End the interview by asking if there are other ways the financial institution can help. This respectful approach accomplishes two purposes: it lets the customer know that you will try to help them, and it allows the customer to decide how to handle the situation.

Let the customer know what alternatives exist; for example, using a cashiers check or travelers' checks instead of a large cash withdrawal. Make sure the customer knows that the financial institution is willing to help but always allow the customer to make the final decision or develop a plan of action. If a customer appears unusually disoriented or confused during the interview, this should be reported to APS.

Key questions:

In what way can we (the financial institution) be helpful to you?

What do you want to do?

Adrian was given a power of Attorney by his terminally ill father. This was filed with the financial institution. The financial institution, however, was not notified when Adrian's father dies. Adrian lived at home with his mother, handles her finances and did errands. When he refused to show her the account books, she became concerned about her financial state, especially as Adrian was drinking very heavily. As Mrs. W.'s health declined, Adrian refused to pay for services. On one occasion, he forcibly removed her from a hospital, apparently afraid she would be placed in a nursing home and use up "his" money. A son-in-law called Adult Protective Services. Mrs. W. signed a release consenting to the financial institution releasing account information, and the vice-president met with the caseworker. The financial institution furnished computer printouts of account balances, records of financial activity for 3 months and information about 2 recently closed IRAs amounting to about \$15,000 each. Penalties for early withdrawal had been paid on both IRAs. The investigation was carried out without Adrian's knowledge. Mrs. W believed that he would remove all funds if he knew he was under suspicion. Adrian had withdrawn large amounts in cash and written a number of checks to bars and escort services. These checks were found to be forgeries. Adrian had signed his deceased father's name. The bank agreed to freeze the account and notified the son of the decision. Mrs. W's condition rapidly deteriorated, however. The caseworker arranged for a hearing to determine mental capacity and a guardian was appointed to ensure that Mrs. W.'s remaining funds are used for her care.

PERSONAL RELATIONSHIP AND FIDUCIARY EXPLOITATION: REPORTING BY THE FINANCIAL INSTITUTION TO APS

1. EMPLOYEE'S INITIAL ORAL REPORT TO SECURITY

Any suspected situation of financial exploitation should be reported orally to security or the designated manager. The reviewing official will discuss the matter with the employee reporter (usually a teller or customer service representative) to see whether further action is warranted.

A. PROMPTNESS CRITICAL

Financial institution reporters should seek to alert security as soon as possible following exposure to a suspicious situation. This is because all types of abuse tend to increase in severity and frequency over time.

B. REPORT DEADLINE

In no case should a report take place later than the beginning of the following business day.

2. SECURITY REPORTING PROCEDURES

On receiving an employee's report, security must decide whether there is sufficient evidence to warrant a report and, based on that assessment, must properly follow up.

Reasonable Cause to Suspect: Necessary Amount of Information

Financial institution officials must have reasonable cause to suspect that an incapacitated or dependent adult has been or is at substantial risk of financial exploitation, abuse or neglect. The financial institution does not need to *confirm* that exploitation of an incapacitated

or dependent adult is occurring. It just needs reasonable cause to suspect. This is a belief that financial exploitation may be taking place based on specific facts, either observed or learned from a reliable source. This belief need not be strong; it may only be a suspicion.

A common sense way to understand the "reasonable cause" standard is to think of it as the "hair-on-the-back-of-your-neck" test. In other words, when the security official's hair stands up, when things do not seem right, reporting is appropriate. Adult Protective Services may also be consulted about the situation before filing the report.

3. IMMEDIATE ORAL REPORT TO APS

Security will orally report the situation to Adult Protective Services. APS will conduct the investigation and provide any follow-up services. Security may furnish relevant information to APS to facilitate the investigation if appropriate confidentiality is maintained.

4. CONFIDENTIALITY STRICTLY OBSERVED BY APS AND FINANCIAL INSTITUTION

A. CONFIDENTIALITY PRESERVED

Regardless of the nature of the report, APS will keep the reporter's name confidential. Employees of financial institutions can rest assured that their names will not be revealed during the APS investigation. It is possible, however, that employees might be called at a later date to testify in court. However, the name of the employee reporter and financial institution are not released under any circumstances, except in limited

circumstances to a district attorney or law enforcement as part of a criminal investigation, or by direct order of a judge.

It is important to remember that reporters are protected from civil liability related to good faith reporting.

B. CUSTOMER CONFIDENTIALITY PRESERVED

During the reporting phase, the financial institution preserves customer confidentiality by reporting the nature of the incident and involved parties, but withholding specific account information or documents until appropriate procedures have been followed during the investigation phase. The report to Adult Protective Services should include:

- **Name, age (actual or estimated) and address and telephone number of the victim.**
- **Name, relationship, address and telephone number (if known) of the suspected perpetrator.**
- **A description of the suspicious circumstances that gave rise to the report** (for example, abusive comments by a relative while the customer withdraws cash; an uncharacteristic pattern of high cash withdrawals; or ATM withdrawals at different financial institutions even though customer is bed bound).
- **Origin of the report** (for example, the particular branch and, if appropriate, employee(s) who first learned of the suspicious circumstances).

- **What actions if any have already been taken** by the financial institution.
- **If other agencies are presently involved** (for example, local law enforcement, state or federal regulators).
- **Emergency or non-emergency nature of the report** (for example, when an immediate response is necessary due to the likelihood of immediate and substantial irrevocable financial loss).

5. NO CIVIL LIABILITY FOR REPORTING

If a financial institution files a report of abuse, there is *no* civil liability unless the report was made in bad faith. Thus, financial institutions and their employees are given extensive immunity to contact Adult Protective Services in suspicious cases. All reports are presumed to have been made in good faith. See Appendix A: Title 22 M.R.S.A. §3479-A.

It may be possible, however, for financial institutions or employees who blatantly fail to detect or report financial exploitation to be held civilly liable.

If the financial institution requests follow-up information, APS will notify security or the designated manager of its response to the report. While actions concerning the victim's circumstances may not be discussed, the reporter may be notified of the status of the investigation.

NOTE: *In Maine financial institution personnel are not mandated reporters, although they may be mandated in other states. Financial institutions active in more than one state should check their reporting status.*

Mr. R., a 65 year old man who had been showing increasing signs of confusion, was making cash withdrawals at his financial institution using seven different credit cards. He had accumulated over \$5,000 of unpaid bills, which he did not understand needed to be paid. His case worker did not know how he had obtained these cards. Other than being able to sign his name, Mr. R. is unable to read or write.

During the Adult Protective Services investigation, Mr. R. told the caseworker that someone had asked to borrow money from him -- but he would not say who this was. Mr. R. is very worried about his financial state, and says he wants help dealing with his creditors, but he continues to protect this person.

A copy of one credit card application form was obtained, revealing falsified information completed in neat block print. A friend who is a florist, and her husband, an attorney, may have been "helping" Mr. R. with managing his finances.

Adult Protective Services referred this case to the District Attorney while the investigation continues. Mr. R. is still not willing to reveal the name of the person who was financially exploiting him, but has agreed to have his credit cards canceled. The case worker has also arranged for a volunteer money manager to help him with his bills.

PERSONAL RELATIONSHIP AND FIDUCIARY EXPLOITATION: INVESTIGATION BY APS

1. FINANCIAL INSTITUTION COOPERATION

The financial institution must balance the often competing goals of, on the one hand, immediately providing Adult Protective Services with information to address alleged exploitation and, on the other hand, respecting customer confidentiality and reasonably insulating employees from participating in investigations.

It is recommended the financial institution observe the following procedures:

A. RELEASE OF FINANCIAL INSTITUTION RECORDS

When a caseworker from APS requests further information about client accounts (for example, account numbers, statements, and specific checks), the financial institution may release such information a) with the written consent of the customer or b) pursuant to a subpoena.

a) Consent of the Customer:

An adult with capacity may provide written consent for the release of financial records. All adults are presumed to have capacity until adjudicated otherwise by a court of law

- * The adult may be requested to accompany the APS caseworker to the financial institution, to sign the consent form in the presence of security personnel.
- * If the adult cannot/will not go to the financial institution to sign a release:

-- A written release, signed by the adult and a witness (the caseworker may serve as a witness) will be obtained.

-- The caseworker will contact security or designated personnel to clarify what specific information is being sought, and provide the consent form.

- * The financial institution will release information upon receipt of a written release signed by the adult.
- * When there is a court appointed fiduciary or a durable Power of Attorney in effect, the authorization to release information can be made by the fiduciary or POA.

b) Subpoena

A subpoena for records overrides any need on the part of the financial institution to secure the consent of the victim or the victim's representative. In Maine, the agency or person requesting the disclosure of financial records must certify in writing to the financial institution that the subpoena has been served on the customer. The Court may dispense with this requirement upon notice by the Attorney General, the Attorney General's designee or the District Attorney that service upon the customer would not be in the public interest. See Appendix B: Title 9-B M.R.S.A. §163 for full text of the statutory provision.

B. COST OF PROVIDING FINANCIAL RECORDS

The financial institution may require payment for the cost of providing copies of documents to APS pursuant to a subpoena.

C. PARTICIPATION OF FINANCIAL INSTITUTION EMPLOYEES IN INVESTIGATION

APS will always contact financial institution personnel through security when additional information is needed (for example, observations by the teller of the interaction between a victim and the alleged perpetrator).

2. THE ROLE OF ADULT PROTECTIVE SERVICES (APS)

APS receives reports of abuse, neglect and exploitation on a 24-hour basis. The agency has the capacity to respond quickly in the event of an emergency report (same day response if the situation is life threatening or irreparable damage will occur if intervention is delayed). In non-emergency situations, APS will usually begin the investigation within 5 working days. APS will begin by visiting the victim's residence and consulting, if necessary, with other service providers and witnesses.

If APS substantiates during its investigation that abuse, neglect or financial exploitation is occurring, then the agency will act to protect the victim from further exploitation or abuse, with the victim's consent. APS may pursue court action to protect adults who are unable to consent (for example, an incapacitated elder with Alzheimer's disease).

If serious harm to or exploitation of an incapacitated adult is substantiated, APS will refer the case to the local District Attorney, law enforcement or the Department of the Attorney General for criminal investigation and possible prosecution.

APS develops case plans that are appropriate to the functional capacity, situation, and resources of the victim. These case plans are designed to use the least restrictive alternative necessary to alleviate the abusive, neglectful or exploitive situation.

In addition to counseling, services may include assistance by a caseworker in providing or referring the victim for a homemaker or home health aide, transportation, emergency financial and legal assistance (for example, a restraining order for protection from the person suspected of abuse), medical and/or mental health care, housing or shelter, home delivered meals or emergency food services, or adult day services.

If the financial institution requests follow-up information, APS will notify security or the designated manager of its response to the report. The confidentiality requirements governing APS dictate that, without the express consent of the victim concerned, only minimal information can be released to the reporter.

SCAM ARTIST EXPLOITATION: FINANCIAL INSTITUTION REPORT TO LAW ENFORCEMENT

Because scam artist exploitation is committed by strangers who are often transients, reporting and investigating this kind of exploitation often requires a different more immediate response from financial institution employees.

Unlike acquaintance and fiduciary exploitation, suspected scam artist activity should be reported directly to local law enforcement. Adult Protective Services does *not* get involved in these cases.

1. CONTACT SECURITY UNLESS IMMEDIATE REPORT NECESSARY

Financial institution employees who become aware of possible frauds should alert security prior to reporting the matter to local law enforcement. However, in emergency situations where delay might cause the suspect to get away, the employee should call law enforcement immediately, and then make an oral report to security.

2. CONTACT LOCAL LAW ENFORCEMENT

A. CONVEY INFORMATION TO LAW ENFORCEMENT

During the reporting phase, the financial institution preserves customer confidentiality by reporting the nature of the incident and involved parties, but withholding specific account information or documents until appropriate procedures are followed. The report to law enforcement should include:

- **Name, age (actual or estimated) and address and telephone number of the victim.**

- **Full description of the suspected perpetrator(s).**
- **Description and license number (if known) of the perpetrator's vehicle.**
- **Description of the suspicious circumstances that gave rise to the report.**
- **Location of the incident** (for example, the particular branch and, if appropriate, employee(s) who first learned of the suspicious circumstances).

SCAM ARTIST EXPLOITATION: LAW ENFORCEMENT INVESTIGATION

1. FINANCIAL INSTITUTION COOPERATION

The financial institution will observe the following procedures:

A. RELEASE OF FINANCIAL INSTITUTION RECORDS

a) Adult with Capacity:

To request specific information about client accounts, law enforcement can obtain written consent from the victim. To expedite an investigation, security should encourage law enforcement to obtain written consent from the victim when they respond to the scene. Security or the branch manager can provide a written consent form and have the victim sign when law enforcement arrives.

b) Power of Attorney or court appointed fiduciary acting on the adult's behalf:

Law enforcement or security should obtain a written release from the fiduciary.

c) Victim may lack the capacity to consent and no fiduciary is acting on the victim's behalf:

Security should seek the victim's written consent. Although the victim may not fully, or even in part, understand actions being taken on his or her behalf, an adult is considered competent by law until adjudicated incompetent by a court.

The need for immediate protection from a scam justifies obtaining consent in this fashion. Security and law enforcement must

presume mental capacity and take immediate precautions.

d) Subpoena:

A subpoena for records overrides any need on the part of the financial institution to secure the consent of the victim or the victim's representative. In Maine, the agency or person requesting the disclosure of financial records must certify in writing to the financial institution that the subpoena has been served on the customer. The Court may dispense with this requirement upon notice by the Attorney General, the Attorney General's designee or the District Attorney that service upon the customer would not be in the public interest.

In addition, certain types of subpoenas (for example, those issued in connection with a criminal proceeding or federal grand jury proceeding) do not need to be served on the customer. See Appendix B: Title 9-B M.R.S.A. §163 for full text of the statutory provision.

B. PARTICIPATION OF FINANCIAL INSTITUTION EMPLOYEES IN INVESTIGATION

Security should request that law enforcement investigators contact financial institution personnel through security when additional information is needed (for example, observations by the teller of the interaction between an elder and the alleged perpetrator).

Although law enforcement officials are typically receptive to such requests, their investigative powers enable them to approach potential witnesses independently.

CONSUMER FRAUD REPORT TO THE ATTORNEY GENERAL

Sometimes situations may not be suitable for referral to APS or law enforcement, yet still warrant official response and investigation. Many consumer issues fall into this category.

In the event that financial institution employees learn of potential consumer fraud, the following steps should be taken:

1. CONTACT SECURITY

Security should be apprised of the situation. Security should interview the victim to determine whether law enforcement or Adult Protective Services intervention is, in fact, warranted. If the matter seems more like a consumer issue (shoddy merchandise, automobile complaints, telemarketing issues, misleading advertisements, insurance, utility concerns, and so forth) security may take the following action.

2. CONTACT THE A.G.'S CONSUMER PROTECTION UNIT BY CALLING 1-207-626-8800

Depending on the circumstances, security may choose to call the Consumer Protection Unit of the Attorney General's Office or to provide customers with the number so that they can call themselves.

SECTION IV

PREVENTING FINANCIAL EXPLOITATION

Two elderly women, retired school teachers, lived together. They had compiled substantial life savings, and could pay a private home health agency to provide services in order to remain at home. An aide was hired who, over a period of 6 years, became a trusted friend, but also developed a cocaine addiction. After Mrs. D. filled in the amount of a withdrawal from her savings account and signed a checking deposit slip, the aide would go to the financial institution.

On the way to the financial institution, the aide would increase the dollar amount of the withdrawal -- receiving the monies not redeposited, in cash. On other occasions, she would forge the elder's signature on withdrawal slips. In one year the aide was able to steal about \$30,000 to support her cocaine habit.

A phone call to Mrs. D. to check the amount she wished to withdraw on the altered slip, or a home visit to verify her "shaky" signature, might have prevented this exploitation.

I. FINANCIAL INSTITUTION PROGRAMS

Financial institutions can play an important role in helping to enhance public awareness of financial exploitation. By designing and implementing preventative measures financial institutions reduce the risk of exploitation for incapacitated and dependent customers.

The considerable variety of banking institutions in terms of their relative size, resources, and internal procedures necessitates the consideration of diverse approaches to prevention. To that end, this section presents numerous options which may be tailored to the specific needs of individual financial institutions.

No preventative measure can constitute an iron clad guarantee that customers will never be victimized. New scams and methods of bypassing financial institution

security procedures are being developed daily. Still, simple strategies can greatly reduce risk.

There are three main components to the successful prevention of financial exploitation: community outreach and consumer education; customer services geared to the needs of special populations of customers (such as the elderly); and financial institution practices and product lines designed specifically to safeguard incapacitated and dependent adults.

A. COMMUNITY OUTREACH

1. EDUCATIONAL MATERIALS

Educational brochures can help customers recognize the potential for exploitation by family and acquaintances and can

communicate simple, common sense steps that can be taken to protect their assets.

It is typically more difficult to get customers to consider the possibility of relationship or acquaintance exploitation than it is to have them recognize the threat of scam artist exploitation. The notion that people we know and trust may take advantage of us is more disturbing than the possibility of being had by disreputable strangers. It is easier for customers to accept that they could be exploited if they hear that others - people like themselves - have been victimized, and that there are ways to prevent exploitation without jeopardizing treasured relationships.

Since successful scams depend on the voluntary participation of victims, community education that makes consumers aware of particular con games is an extremely effective deterrent. With this in mind, it is suggested that financial institutions annually send a warning letter or flyer to customers in their monthly financial institution statements. Besides its effectiveness, this simple precaution is usually greatly appreciated by customers.

This Project includes several suggested customer brochures. Financial institutions may also develop their own brochures and educational materials. When designing consumer publications a simple layout, and large type, ideally 12 to 14 point, and consistent spacing between letters is desirable (see Part II of this section: "Preventative Measures for all Older Persons").

2. PRESENTATIONS, SEMINARS OR SOCIAL EVENTS

Community outreach efforts can also help to prevent financial exploitation. Seminars or social events may be held by the financial institution for elders in the community. Consider holding events at different times of

day and at different locations, for example at the local Senior Center, or elder housing development, as well as at the financial institution. These events can open lines of communication between employees and customers, and enhance the financial institution's image within the community.

These meetings can:

- a) Alert and educate consumers about scams, adult abuse and financial exploitation, and methods of protecting themselves from victimization;
- b) Inform consumers of the steps that can be taken and services that are available if they have been victimized;
- c) Provide opportunities for staff to get to know existing consumers, generate new ones, and gather information about needed services;
- d) Educate consumers about existing financial institution programs and accounts;
- e) Decrease social isolation for elders and increase customer satisfaction;
- f) Generate goodwill in the community.

3. ALERTING THE MEDIA

a) Preventative Initiatives

Use the news media to publicize the financial institution's prevention initiatives for reducing the risk of financial exploitation. The media may even wish to highlight information on current common con artist scams for special features.

It goes without saying that financial institutions should ***not*** alert the media with a

specific example of a customer who has been exploited by family or acquaintances. However, once APS is involved and the victim has been protected from further exploitation, financial institution personnel may wish to suggest (depending on the financial institution's relationship with the customer) that the adult contact the news media to share his or her story in an effort to help others keep from being similarly exploited. The media are often eager to seize on a real-life story, especially when it exposes concerns common to all.

b) Current Scams

If the financial institution learns that a particular scam is being used within its community, financial institution officials should immediately contact the news media. Con artists are known to closely monitor the media, and will quickly move on in search of easier prey once their particular scam has been publicly exposed.

A financial institution's vocal public support of services for exploited elders and other vulnerable adults and the rapid, and effective, prosecution of exploiters and scam artists will go a long way in increasing community awareness of financial exploitation.

4. NETWORKING BY SECURITY IS KEY

New methods of exploiting vulnerable adults, often by bypassing financial institution security measures, are always being found. Also, since scams are continually changing and since con artists are continually moving, it is essential for security personnel to maintain contacts with other professionals throughout the state and country. Organizations allow members to learn about current trends in financial exploitation and to exchange information and photographs on cases. One excellent

national agency is *Professionals Against Confidence Crime*, 20500 S. Cicero, Matteson, IL 60443. Security personnel are eligible for associate memberships with this organization.

B. CUSTOMER SERVICES

1. EMPLOYEE SENSITIVITY

One of the first lines of defense is for financial institution personnel to know their customers individually and be sensitive to their needs. Employees can familiarize themselves with regular customers' individual banking patterns so that any changes in types or dollar amounts will be more noticeable, as well as changes in appearance, behavior or attitude.

Employees become more sensitive to customer needs when they are trained to:

- a) **Recognize** signs of financial exploitation, abuse, and neglect and be aware that a family member may be the abuser;
- b) **Identify** common scams;
- c) **Advise customers** about alternative product lines which may better serve their banking needs;
- e) **Encourage the use of Direct Deposit** by all customers. This prevents checks from being lost, stolen or destroyed. Some customers are unaware that Social Security checks can be deposited directly into an account. Employees may want to give customers the phone number of the local Social Security office.

2. CUSTOMER SERVICES SPECIALIST

Financial institutions may also designate certain members of their staff to be

specially trained in the needs of older and other vulnerable customers. These employees would have primary responsibility for interacting with these customers and monitoring their well-being, and may also serve as a resource for other employees on elder issues.

Customer Services Specialists should be:

- a) **Trained and skilled in interviewing elders and other vulnerable adults.**
- b) **Aware of, and be able to refer these customers to the many services available to them** through Adult Protective Services and local agencies. For example, meals or food deliveries can be arranged for elder and disabled adults having difficulty cooking.
- c) Able to refer customers to a money management program, if one exists in their area. Financial institutions can contact APS to see if there is a program in their area.

3. BANKING ASSISTANCE

Financial institutions may also wish assist some customers by providing:

- a) **Regular scheduled visits by financial institution employees to places convenient to special customers** (for example, elder social centers or elder housing). Financial institution employees are able to use these visits to provide limited banking services, educate customers about new product lines and generate goodwill in the community.

- b) **Home visits** to housebound customers to provide banking services. For example, employees may visit older customers at home to verify a signature or obtain a PIN.

C. FINANCIAL INSTITUTION PROCEDURES AND PRODUCT LINES

Financial institutions should take a proactive approach to developing new procedures and product lines to help prevent financial exploitation.

The first step is to reassess existing systems and establish alternate procedures as needed. Financial institutions may also want to incorporate additional control measures in their product lines to alert staff members to potentially exploitative activity.

1. SAMPLE PROCEDURES AND CONTROL MEASURES

- a) **A mechanism for detecting unusual activity in accounts.** Multiple withdrawals during the same day or week, or sudden changes in amounts or frequency of transfers between accounts is frequently a sign of exploitation. Another example is ATM withdrawal activity for homebound adults.
- b) **Placing an alert or "flag" on an account.** If a financial institution suspects someone is exploiting an incapacitated or dependent adult, a "flagged" account may alert various tellers in one office, or between branches, to watch for indicators of exploitation.
- c) **Procedure for verifying suspicious transactions.** Procedures for the

verification of signatures, safety deposit box access, and fiduciary documentation (including the specific powers of the fiduciary), should be in place. A system of phone verification (with homebound adults) of suspicious transactions may be arranged with account holders.

- d) Alternative banking practices.** Financial institution tellers can be given guidelines as to when to recommend to customers the use of direct deposit, protected accounts or other practices which may safeguard assets or prevent exploitation. For example, employees might advise customers about alternatives to obtaining ATM cards for the use of a third party.

2. PROTECTED ACCOUNTS

Many financial institutions have designed accounts that are geared toward a particular market; for example, students or older citizens. These accounts, while usually having certain restrictions, generally seek to meet the particular banking needs of the target group.

At present, adults having difficulty managing their finances, or who are unable to visit the financial institution themselves, are frequently advised to open joint accounts with caregivers. Joint accounts have proven to be extremely vulnerable to abuse. There is little recourse when the financial institution suspects financial exploitation, or when the victim seeks to recover funds, if the exploiter is a joint account holder. A "protected account" could be incorporated into a product line geared toward older customers, and would be designed to reduce the likelihood of mishandled or stolen funds. Protected accounts can be designed to

provide safeguards lacking in joint accounts, and may be used as a marketing tool.

Customer may be offered options which will meet their banking needs, but must not be forced to choose a particular type of account based solely on their age or disability.

The following is a list of possible components of a protected account. As each financial institution is different, and may have different resources, some of these components may not be feasible.

- a)** Two signatures required for all withdrawals over a specified amount;
- b)** Automatic transfer capability, whereby a set dollar amount is automatically transferred from one account controlled only by the adult to a second joint account. The adult would maintain the bulk of funds in an individual account. Bills and other expenses could be paid by a family member or caregiver from the joint account that receives the transfer;
- c)** Direct or financial institution assisted deposit of checks or other assets (many customers like this option as it reduces the likelihood that they will have to stand in line);
- d)** A block on certain electronic banking procedures (for example, the account holder agrees that an ATM card will not be available with this account).
- e)** A "flag" on the account to notify the customer in the event of unusual activity. A "flag" may also note that the account may not be used as collateral on a loan or for cash

advances on a credit card unless specific consent is obtained directly from the customer.

3. SAFEGUARDS FOR ELECTRONIC BANKING

With the increase in the use of electronic banking technology, face to face contacts between customers and financial institution personnel are considerably reduced. This results in greater opportunities for exploitation. When designing new systems, financial institutions should anticipate the potential for abuse. Also many elders prefer not to use electronic banking, preferring the traditional practices with which they are familiar.

II. PREVENTATIVE MEASURES FOR ALL ADULTS

All adults are advised to make decisions about their future care and well-being while they are still in good health. Financial institution personnel should talk to consumers about planning for the future, good financial practice and safe banking habits.

The following pages contain samples which may be adapted for posters or brochures developed by the financial institution. Materials should be always be clear, easy to read and in large print.

In four months, Pat and Sammy stole over \$6,000 from their grandmother's financial institution account. Mrs. M. allowed Pat to become a joint account holder because she is legally blind. Mrs. M.'s financial institution manager said that they were aware that the elder's money was probably being misappropriated, but no criminal complaint could be made as Pat was removing money from his joint financial institution account. Pat had the elder sign the withdrawal slip, and then would fill in the amount to be withdrawn. Pat would hand her the cash she wanted and keep the rest. Adult Protective Services assisted Mrs. M. to move from Pat's home, and had Pat's name removed from her account. A money manager now helps Mrs. M. with her banking.

The manager was not aware of Adult Protective Services. Had he known to file a report, Mrs. M. would have retained most of her savings. Mrs. M. continues to be upset that the financial institution cannot return her money.

PERSONAL SAFETY

- **Be aware of the risks of living with a person who is a substance abuser or has a history of violence. Have a plan to keep yourself safe, and explore different housing options available to you.**
- **Keep up with your friends.**
- **Keep control of your own phone.**
- **Open and post your own mail.**
- **If you, or someone you know, is a victim of abuse, neglect or exploitation call:**

**THE ADULT PROTECTIVE SERVICES INTAKE LINE:
1 (800) 624-8404**

PLANNING AHEAD

- **Establish relationships with personnel at your financial institution.**
- **Cultivate friends of all ages so you maintain a strong support network.**
- **Become familiar with resources in the community designed to help older people and their families.**
- **Execute a Power of Attorney that will grant financial decision making power to a trusted friend, relative, or attorney. Know the person to whom you are granting this authority. A Power of Attorney can be as limited or as broadly defined as you wish, and can be revoked any time. The specific "powers" given to this person should be detailed in writing. Give your financial institution a copy.**
- **Consider a Durable Power of Attorney that will remain in effect even if you become incapacitated.**
- **Consider a Trust, a legal arrangement where a person or financial institution manages assets for you.**
- **Put all financial instructions in writing. Be specific.**
- **Keep accurate and complete financial records of all transactions.**
- **Gather all important documents together (wills, insurance policies, and account information). Tell someone you trust where these documents are kept.**

GOOD FINANCIAL PRACTICE

- **Use Direct Deposit for your checks.**
- **Do not leave money or valuables in plain view.**
- **Sign your own checks. Do not sign "blank checks" where another person can fill in the amount. (If you need someone to help you write out checks before you sign, ask a third party to review the check and take it to your financial institution).**
- **If someone is helping you with managing your finances, get a trusted third person to review your account statement.**
- **Do not sign any document without reading it carefully.**
- **Do not sign any agreement until it has been reviewed by a trusted friend or other advisor, or an attorney. If possible have two advisers look at the agreement.**
- **Do not lend money in return for a general promissory note.**
- **Do not sign over money or property to anyone in return for care, even a family member or friend, without having the agreement reviewed by an attorney. The agreement must be written. Give someone else a copy.**
- **Do not allow anyone, even a relative, to put their name on your account without your express consent. Your financial institution can set up a separate account in both names with automatic transfer of limited funds.**

**THE ADULT PROTECTIVE SERVICES INTAKE LINE:
1 (800) 624-8404**

AVOID SCAMS!

- **If a deal seems too good to be true -- it probably is!**
- **Never let yourself be rushed into a "deal." This usually means the person is up to no good. Ask for details in writing and time to review them with a trusted friend, advisor, or attorney.**
- **Never give out credit card numbers over the phone unless you placed the call.**
- **Never give out your Social Security number or financial institution account number over the phone.**
- **Give to charities you know. Check out unfamiliar charities.**
- **Get several estimates before you have any renovations or work done.**
- **As a rule, do not have work done on your home by companies or individuals contacting you and offering deals.**
- **Do not pay for work in advance.**
- **Check references, telephone numbers and home addresses.**
- **Contractors must be licensed by law. Check license numbers.**
- **Questions? Call:**

**The Attorney General's Consumer Protection Unit at
1-207-626-8800.**

SAFETY TIPS FOR AUTOMATIC TELLER MACHINE (ATM) USE

- **Do not allow anyone else to use your ATM card.**
- **Cancel your ATM card if you do not use it.**
- **Do not give anyone your Personal Identification Number (PIN).**
- **Do not use an easily detectable PIN (a birthdate or social security number).**
- **Check account statements carefully for unauthorized withdrawals.**
- **Be cautious using an ATM at night.**
- **Do not use a badly lit ATM. This is a danger sign because they are designed to be brightly lit for your safety. Report the situation to your financial institution.**
- **Be aware of people around as you use the ATM -- don't let them watch you enter your PIN number.**
- **Put your money away safely before exiting the ATM area.**
- **Look around as you exit the ATM area. Do not leave if you do not feel safe.**
- **Do not open the door of the ATM area to anyone without a card.**

SECTION V

THE CONTEXT

Tina lived with her three children, boyfriend and 94 year old great-grandmother, Mrs. D. When DHS removed Tina's children, due to her heroin addiction, welfare income was lost. Tina began to help Mrs. D. with bill paying, but her great-grandmother became increasingly confused and forgetful.

Mrs. D.'s financial institution noticed a sudden increase in checks written to Tina, some with suspicious signatures. The financial institution contacted Adult Protective Services.

During the investigation, the case worker found that Tina and four of her friends, all substance abusers, had successfully cashed 75 forged checks. All were arrested by police. Tina and her friends were not prosecuted because Mrs. D. refused to testify against her great-granddaughter.

Adult Protective Services helped Mrs. D. to confront Tina. The case worker worked with the financial institution to set up a system to protect the elder's accounts. The financial institution paid some monthly bills automatically. When Tina came to the financial institution to cash a check written to herself, the branch manager contacted Mrs. D. to see if this was legitimate. Adult Protective Services has now closed the case. The financial institution continues to provide assistance to Mrs. D. to insure no further exploitation by Tina. Tina still lives with her great-grandmother.

I. THE PREVALENCE OF ADULT ABUSE

Contrary to popular belief, incapacitated and dependent adults are most at risk from people known to them: adult children, spouses or partners, other family members, friends and other caregivers. They are less likely to be victims of random street crime.

The exact number of elders who are abused, neglected or financially exploited each year in the United States is not known. The prevalence and incidence of domestic elder abuse are believed to be both underestimated and under-reported.⁸ Estimates are that 84% of all elder abuse cases are never reported.

Reasonable estimates suggest that as many as 5 million seniors are abused in the United States each year. Research has shown that older adults who are abused or mistreated

are three times more likely to die within the next decade than the same age adults who are not mistreated.⁹

1. THE MAINE EXPERIENCE

Maine has approximately 240,000 persons aged 60 or older.^[10] An estimated 12,000 of those adults may be victims of abuse, neglect and exploitation. Clients of APS, however, may also include adults with mental illness as well as adults with medical problems or disabilities. The typical victim of abuse, neglect and exploitation in Maine is female, over 65 years of age and dependent on some other person for part of their daily living activities.

APS receives over 300 reports of financial exploitation of incapacitated and dependent

adults per year. Since July of 2001, APS has referred over 2 million dollars in substantiated cases of elder financial exploitation to the Office of the Attorney General for investigation. On average, the reported loss is approximately \$39,000.

The physical and emotional impact on victims and the people close to them is immeasurable. There is also a significant monetary impact on the tax-paying public, who pay the cost through a growing Medicaid budget for institutional care. Older people who are financially exploited have diminished capacity to pay for their own care and must rely on public assistance, primarily Medicaid (MaineCare) services.

2. UNDER-REPORTING: WHY VICTIMS ARE RELUCTANT

Incapacitated and dependent adults of all ages may be reluctant to report abuse or accept help. The primary reasons are:

A. DENIAL

Consciously or unconsciously the incapacitated or dependent adult is not able to acknowledge that the abuse is occurring. This kind of "denial" is common among elderly victims and is also seen in children and younger battered women. For example, an elderly woman who has been battered throughout her marriage by her spouse may see abuse as "normal" because she has nothing against which to compare the abusive situation.

B. SELF-BLAME

Physical and mental abuse over time can wear away the victim's sense of identity and self esteem to the extent that victims come to believe that they "deserve" or have provoked the abuse. It is often easier to identify themselves as the wrongdoers rather than their children, spouses, other family members or caregivers.

C. SHAME AND EMBARRASSMENT

Victims are often ashamed to admit to being mistreated by someone related to them. They may feel that to admit the abuse will reflect badly on their past parenting abilities or family name.

D. DEPENDENCY

Victims may be abused by people on whom they depend for a large part of their care. The victims often fear that if they report the abuse the caregiver will be abandon them. They may also fear losing their homes and being forced to move into a nursing home as they can no longer survive living alone.

E. FALSE SENSE OF LOYALTY TO THE CAREGIVER OR LOVED ONE

Typically the caregiver abusing the victim does not treat them badly all the time. Victims may feel conflicted about reporting the abuse because they feel genuine love and loyalty to abusers, especially if they are family members.

F. FEAR OF RETALIATION

Victims often fear that reporting may cause the abuser to retaliate against them, and perhaps to escalate the abuse.

G. PHYSICAL INABILITY

Victims may lack the physical ability to report. They may be bedridden, or have limited mobility and lack access to authorities because they have no transportation. Abusers may deliberately isolate their victims from access to help.

H. PERCEPTIONS OF THE SYSTEM

Incapacitated and dependent adults may not know they can report abuse, or lack information about where to call for help. They may also feel that social service agencies and the criminal justice system will not be sympathetic or responsive to their needs. They may fear that no one will believe them or that they will be regarded as incompetent simply because of their age or disability, and that their right to decide their own future will be threatened or eroded. They may also fear that their only caregiver will be incarcerated leaving no one to look after them.

3. RISK FACTORS FOR ADULT ABUSE

Abuse of incapacitated and dependent adults cuts across all demographic boundaries. There are no definitive profiles of victims or abusers. Anyone can become a victim of abuse, whatever their relative age, gender, physical or mental health and functioning, financial status, and educational, religious, cultural or ethnic background. The "typical" victim, however, is likely to be female, of advanced age, severely impaired, and isolated, all of which are high risk factors.

Abusers may be elderly themselves, physically or mentally disabled, alcohol or substance abusers, or financially dependent on the victim. They may simply be overwhelmed by an adult's needs, unable to meet these needs and not aware of available services. The most frequent abuser is a spouse or partner, followed by adult children, grandchildren, other relatives and acquaintances.

Financial institution employees should be alert for the following risk factors in cases of suspected abuse, neglect, and financial exploitation of incapacitated or dependent adults.

A. DECREASED PHYSICAL HEALTH AND MOBILITY

Disabled and elder adults may have multiple health problems and suffer from chronic illnesses. The likelihood of physical impairment increases with age. Perceptual impairment (loss of sight and hearing) may decrease the older person's ability to function independently, and arthritis may decrease mobility.

Physical changes may cause an increased dependency on others for the necessities of daily living, cause the adult to become housebound, and increase the risk of abuse. Physical change may also render adults vulnerable in situations they were previously able to control, or defend themselves against. For example, a woman in her eighties knew that her husband sometimes became physically abusive when drunk. She used to run to her daughter's home until he sobered up. When she became wheelchair dependent due to a stroke, she could no longer leave the house alone.

B. DECLINING MENTAL STATUS

Decreased intellectual function is not an inevitable result of aging, although older people are often stereotyped as forgetful or confused. With advanced age, however, the chances of suffering from dementia do increase.

The best known and perhaps the most common dementia is Alzheimer's disease, a progressive degenerative disease that results in impaired memory, thinking, behavior and eventually death. Other causes of dementia include: multi-infarct, caused by strokes; and Parkinson's disease.

Confusion and forgetfulness in the elderly are not necessarily a result of a progressive dementia like Alzheimer's disease. The condition may be reversible as similar symptoms are also associated with depression, grief, malnourishment, head

injuries, other medical conditions (including infections and fever) and social isolation.

Elders may also appear confused or demented due to adverse reactions to prescription medicines, or substance abuse and alcoholism.

In addition, adults with severe illness, mobility and communication problems or mental illness may be isolated and therefore at a greater risk of abuse, neglect and exploitation.

Mrs. R., an 82 year old extremely forgetful woman, lives with her chronically ill 82 year old husband. A visiting nurse reported that she was being financially exploited by a former home health aide. The home health aide had been fired by the employing agency but had continued to visit Mrs. R., stealing, forging and cashing personal checks. Even after this was discovered, Mrs. R., due to her confused state was unable to distinguish who her current legitimate health aide was, and continued to admit Clare to her home. Clare stole a total of \$13,000.

With the help of her family, the Adult Protective Services case worker and her financial institution, Mrs. R. completed affidavits of forgery and the money was refunded. The financial institution referred the case to their own investigator who worked with the police to obtain an arrest warrant for Clare. The case worker referred the case to the district attorney's office. At the elder's request the account was closed and Mrs. R.'s finances are now dealt with by a trusted family member.

C. SOCIAL ISOLATION

Social isolation is often exacerbated by the deaths of contemporaries, spouses, partners, siblings and friends. Abusers may also attempt to keep an incapacitated or dependent adult isolated, refusing to apply for economic aid or services, resisting outside help, or changing social and health care providers frequently so that the victim's situation is hard to assess. Isolation can hide the effects of physical abuse, neglect or exploitation, and can also be used as a form of emotional abuse.

D. WEB OF DEPENDENCY

As a disability or chronic illness progresses, the adult may become increasingly dependent on others for their care. Elders may also become increasingly dependent on others. In turn, caregivers may be dependent on the adult for financial support, emotional support or housing. In some situations financial strain or other family

responsibilities may result in neglect of the victim's needs.

E. CAREGIVER STRESS

Increased frailty or other care needs may lead to increased dependency. Dependency does not in itself cause abuse, but the demands of caring for a very frail adult, especially in the long-term, can lead to caregiver "burn out." Stress can result in impatience, depression, anger and hostility, sometimes resulting in abuse. Other life, family, or economic pressures, for example unemployment, can also exacerbate caregiver stress.

F. FAMILY HISTORY OF VIOLENCE

A history of domestic abuse in the family is a high risk factor for abuse of incapacitated and dependent adults. People who were abused as children, or who have witnessed or experienced spousal abuse, may not know of alternate methods of dealing with anger.

This increases the risk of abuse of an older parent.

G. IMPAIRMENT OF EITHER CAREGIVER OR ADULT

Physical impairment or mental illness of either the adult or the caregiver are also risk factors for abuse.

H. SUBSTANCE ABUSE

Alcohol or illegal substance use by the caregiver carries a high risk of physical abuse by an intoxicated caregiver. The risk of financial exploitation of the adult to finance the caregiver's drug addiction is also increased.

The incapacitated or dependent adult may also abuse alcohol and other substances. Substance abusing victims may become increasingly more confused, forgetful, and agitated, and unsteady on their feet. This makes them less able to defend themselves from abuse.

Mrs. N., aged 77, lived with her two unemployed grandsons in a known "crack house." Both grandsons had been arrested several times and were known to kill animals in Mrs. N.'s house with a baseball bat.

Will and Alan would take Mrs. N. to her financial institution where she cashed a monthly \$625 Social Security check. They would purchase groceries and alcohol. Later, when Mrs. N. was drunk, they would lift most of her remaining cash. Mrs. N. would run out of money, and could not pay her rent or buy food by the end of the month.

With Adult Protective Services assistance, Mrs. N. went into detox. and overcame her alcohol addiction. The case worker helped Mrs. N. move to an apartment in elder housing, and arranged for a volunteer money manager to help her with bill paying.

II. THE ADULT ABUSE REPORTING LAW

In 1981, the Adult Protective Services Act was passed, replacing an earlier 1973 law. The APS Act established a protective program for incapacitated and dependent adults unable to protect themselves from abuse, neglect or exploitation.

In 1982, the Legislature enacted a mandatory reporting amendment to the APS Act. This amendment identifies certain professionals who are required to report suspected cases of abuse, neglect or exploitation of incapacitated or dependent adults and specifies the conditions under

which reports shall be made. A provision for optional reporting was also included. The list of mandated reporters has been amended several times and now includes some categories of professionals as well as some non professional individuals..

1.DEFINITION OF PROTECTED POPULATION

Any incapacitated or dependent adult is covered by the APS Act. The APS program is designed to help incapacitated and

dependent adults who have an *ongoing personal relationship with the abuser*. Random assaults or incidents involving persons not known to the victim should be reported to law enforcement.

Suspected abuse or neglect of a minor (anyone under 18 years of age) should be reported to the Bureau of Child and Family Services by calling the Child Protective Services intake number at 1-800-452-1999.

2. REPORTING ADULT ABUSE

"Any person" may make a report to Adult Protective Services if they have reasonable cause to suspect that an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation.

The Maine reporting law also specifically designates certain professions as well as other categories of individuals who are mandated to make reports. Mandated reporters are specified in Title 22 M.R.S.A §3477 of the statute:

A mandated reporter who fails to make a report when abuse, neglect or exploitation is suspected may be fined up to \$500. In the case of a professional, the court or the Department will also report to the person's licensing registration board, accrediting unit or facility.

3. REPORTABLE CONDITIONS

There are five main categories of reportable elder abuse: **physical**, **sexual** or **emotional** abuse; **neglect**; and **financial exploitation**.

Financial institution employees are most likely to be in a position to identify financial exploitation which is discussed in detail in Section II. They should, however, be aware of these other types of adult abuse. To gain access to the finances of incapacitated and dependent adults, financial exploiters may abuse them physically and emotionally.

Misuse of an adult's funds by a caregiver frequently results in the neglect of the victim's needs.

A. PHYSICAL ABUSE

Physical abuse is the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain.

Signs of physical abuse include:

- Bruises, on the face and body or especially bilateral (on both arms) or wrap around;
- Burns shaped like the instrument causing them (irons, cigarettes);
- Rope burns, indicating restraints;
- Scalds, especially of the extremities;
- Patchy baldness, as if hair has been pulled out.

B. SEXUAL ABUSE

Sexual abuse is any contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult's informed consent.

Signs of sexual abuse include:

- Stained or bloody lower clothing;
- Difficulty in walking;
- Emotional disturbance.

C. EMOTIONAL ABUSE

Emotional abuse is the non-accidental infliction of mental or emotional anguish by threat, humiliation, or other verbal or nonverbal conduct. Victims may suffer emotional abuse because of threats to harm them, by being socially isolated, subjected to insults, or threatened with nursing home placement by a caregiver who has power over them.

Signs of emotional abuse include:

- Extreme anxiety, fear;
- Shaking, crying, nervousness
- Depression or withdrawal

Emotional abuse is the most difficult form of abuse to identify. Behavior some might find unacceptable may not be perceived as abusive by the recipient. The presence of emotional abuse, therefore, is determined by the detrimental effect the abusive behavior has on the victim, not by the behavior of the perpetrator.

It is often found in combination with other forms of abuse, such as physical and sexual abuse, or financial exploitation.

D. NEGLECT

Neglect means a threat to an adult's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these. Neglect falls into two categories: neglect by a caretaker and self-neglect. Both categories are reportable.

Signs of both categories of neglect include:

- Poor personal hygiene;
- Inappropriate or dirty clothing;
- Evidence of poor nutrition, or dehydration;
- Confusion;
- Under or over-medication;
- Untreated wounds or dirty dressings on wounds;
- Lack of appropriate aids (hearing aid, walker, cane).

Neglect may not always be intentional. Incapacitated or dependent adults may suffer neglect by well-meaning caretakers incapable of providing adequate care. Caretakers may become physically impaired themselves, may be unaware of the extent of the victim's needs, or lack the knowledge of how such needs may be met. This is unintentional neglect.

At the other end of the spectrum, neglect may mean that the victim is deliberately deprived of necessities by a caretaker. This type of neglect, sometimes called "active" neglect, is frequently accompanied by other forms of abuse.

Maine does not differentiate between active and passive neglect in its reporting laws.

An adult may be "at risk" for self-neglect due to a variety of factors including physical illness, inadequate resources, a lack of social supports, mental illness, dementia or substance abuse problems.

4. THE ADULT PROTECTIVE SERVICES SYSTEM

Adult Protective Services is a program within the Department of Health and Human Services and is mandated by law to receive and investigate reports of abuse, neglect or exploitation of incapacitated or dependent adults. As part of its program, APS administers a 24-hour, 7 day a week intake line for the reporting of suspected abuse, neglect or exploitation of incapacitated or dependent adults.

Other components of the Adult Protective Services program are public guardianship and conservatorship services for a limited number of adults who need guardianship or conservatorship to protect them from abuse, neglect or exploitation.

A. GOAL OF ADULT PROTECTIVE SERVICES

Adult Protective Services seeks to achieve simultaneously and in order of importance: freedom, safety, least disruption of lifestyle, and the least restrictive care alternative. The primary focus is on ending or alleviating the abuse for the incapacitated or dependent adult through providing a variety of services and interventions.

The complexity of adult abuse and the differing needs of each situation require diverse interventions. For very frail and dependent elders neglected by overburdened and/or stressed caregivers, for example, appropriate interventions might include in-home services, respite care, counseling and adult day services.

B. RESPONSIBILITIES OF APS

APS must:

- Receive reports on a 24-hour basis.
- Investigate appropriate reports by contacting the adult, in person whenever possible, and consulting with others who may have relevant knowledge, including family members and other service agencies.
- Respond in a timely manner depending on the nature and urgency of the report. Generally, a reporter can expect a response within 7-14 working days. APS has a same day response only in emergency situations.
- Refer to the District Attorney (DA) or law enforcement upon finding evidence that a person has abused or neglected an incapacitated or dependent adult resulting in serious harm or has exploited an incapacitated or dependent adult.
- Keep all reports and records confidential, with the exception of investigative reports made to the DA or law enforcement.
- If abuse of an incapacitated or dependent adult is substantiated, develop a case plan that is appropriate to the functional capacity, situation and resources of the victim.

- Upon request, inform reporters of the APS response to the report. (For example, whether the case was opened or a referral made to the DA).

C. SELF-DETERMINATION: THE ADULT'S RIGHT TO CHOOSE

The adult has the right to refuse the investigation and must consent to receiving services. Adult Protective Services will make every effort to ascertain that the refusal of the investigation or services is the adult's wish, that the adult is not being coerced, and that the adult has the capacity to make this decision.

If the APS investigation concludes that the adult lack capacity to consent, APS may petition the court for a hearing to determine capacity. The court may appoint a conservator, guardian, or other person to act as fiduciary for the incapacitated adult and consent to Adult Protective Services. The court must also establish the least restrictive appropriate alternative for the adult.

The tellers in one financial institution all know Mrs. P., who is 93, because she is said to "torment people" by complaining and screaming. Her daughter, Sheila, helps her with paying bills.

Sheila called to find out the current balance of their joint financial institution account. While on the phone, the teller heard Mrs. P. screaming at Sheila, and Sheila yelling "shut up" accompanied by sharp slapping sounds.

Although the teller did not believe Sheila was financially exploiting Mrs. P., she did speak to her Branch Manager. She appropriately filed a report of suspected physical abuse with Adult Protective Services.

Mrs. P. refused APS assistance, although Sheila probably did hit her mother. Mrs. P. clearly had capacity to refuse consent. The case was closed without help being provided.

D. CAPACITY AND THE LEAST RESTRICTIVE ALTERNATIVE

In selecting options, priority is always given to those which are least restrictive to the adult's autonomy and freedom. For example, older people may lose the ability to balance their checkbooks but can make rational and informed decisions about how they want to spend their money. A conservator would undoubtedly reduce the possibility of elder writing checks with insufficient funds, but would be unnecessarily restrictive. Limited money management would be an appropriate option.

Definition of Capacity: To have capacity, an adult must have sufficient understanding to make or communicate responsible decisions concerning that individual's person. Generally, the adult must have the reasonable ability to understand the information conveyed, evaluate options and communicate a decision.

APS will always explore the least restrictive alternatives before deciding to petition the probate court for conservator or guardian for a financially exploited adult. The following list is presented in order of least to most restrictive alternative:

a)Trusted Family Member or Friend

When the adult is simply having problems managing paperwork, balancing their checkbook or paying bills, but is not incapacitated, it may be sufficient to arrange for a trusted family member, friend, or volunteer to help with these functions. This option may be offered to prevent risk or after the person perpetrating the abuse has been removed from the picture. One program that matches volunteers and adults is a money management program available in some parts of the State.

b)Power of Attorney

A Power of Attorney is a written agreement between people that authorizes one to act on behalf of the other. A person does not have to be an attorney to be granted power of attorney. A person who holds power of attorney has the authority to sign documents and conduct transactions on the granting individual's behalf. The power of attorney delegates as much power as an individual desires; it can be limited to specific transactions or can be very broad. It can also be revoked at any time. A durable Power of Attorney remains effective if the adult becomes incapacitated.

c) Representative Payee

A representative payee is a person or organization authorized to cash and manage governmental benefits. For people whose only source of income is Social Security or Veteran's Benefits, who need help managing this income, a representative payee may provide adequate protection without the more intrusive aspects of conservatorship. In terms of appointment, preference is given to a relative, first; a friend, second; and the agency having custody of the person, last.

d) Conservators

Conservatorship should be considered only for people whose judgment or intellectual capacity is so seriously impaired that they cannot absorb the basic information needed for financial decision making. A conservator only handles the adult's financial affairs. An individual must be adjudicated incapacitated by the probate court prior to having a conservator appointed.

e) Guardians

Guardianship provides a broad and controlling form of decision making help. A guardian is a person appointed by the probate court to handle the personal affairs of another person, known as the "ward." The judge must find that the ward is incapable of handling his own affairs due to mental retardation, mental illness, inability to communicate because of a physical or medical condition, or other specific conditions. In Maine, everyone 18 years or older is legally considered to be on his own. Parents are not presumed to be legal guardians and do not have any official decision making authority over their adult children unless they go to court and are appointed guardians.

Similarly, adult children may not make decisions on behalf and against the will of their elderly parents without the legal authority of guardianship. This protects all legal adults from overly intrusive, although often well meaning, actions of others.

Guardianship should only be sought when impaired judgment or capacity prevent a person from understanding basic information necessary for

decision making and pose a major threat to his welfare. It is almost impossible to precisely define what constitutes a major threat to a person's welfare. A person's living situation and access to advice and help are major considerations in determining whether guardianship is necessary.

A guardianship should not be used to protect a person from the normal daily risks we all face in working, having a home, moving about, being consumers or associating with others.

A guardian should not be appointed simply because the person has made or is about to make poor decisions.

SECTION VI

TRAINING NOTES

The Project has developed two recommended agendas which have been used in training financial institution personnel.

The first agenda is for the "Train the Trainer" program. Participants are generally security officers and managers interested in training employees (other security officers, customer service representatives and tellers) at their respective financial institutions. The minimum time recommended for this agenda is one and a half hours.

The second agenda is a half hour session for employees to be administered by financial institution trainers. Customer services representatives and tellers should also receive a copy of the employee manual at this training for future reference. This agenda can also be integrated in orientation for new employees.

Financial institutions are encouraged to adapt these agendas and supporting training materials to their needs. Project staff are available for consultation or to assist with employee training. When tailoring the training agendas, the following points should be considered.

Time allotted for training. In our experience, the times suggested here are the minimum necessary for adequate training. Participants have remarked that extended discussion of specific cases add to their understanding of financial exploitation, methods of detection, financial institution procedures and appropriate responses.

Involve local Adult Protective Services staff and law enforcement. We strongly recommend that Adult Protective Services staff and law enforcement participate in training. They can provide an indepth understanding of many issues concerned in exploitation cases and descriptions of successfully resolved cases. Most important, joint training sets the stage for future collaboration and success.

Refresher courses. After staff have received training, financial institutions may wish to consider short "refresher" courses at given intervals. Security may use these sessions for updating staff on new methods of exploitation, as well as new preventative measures developed by the financial institution. These sessions provide opportunities to build employee morale by reporting successful efforts to protect financial institution customers.

TRAINING FOR FINANCIAL INSTITUTIONS: FINANCIAL EXPLOITATION OF INCAPACITATED AND DEPENDENT ADULTS

TRAINING AGENDA **Time: 1 hour 30 minutes.**

I. WELCOME and OVERVIEW Time: 10 minutes

- **The Need for the Project**
 - A devastating form of abuse, financial exploitation of incapacitated and dependent adults includes:

Personal relationship exploitation by people known to the victim, often relatives and friends (“loved ones”); and
Confidence crimes (con artist scams) by strangers.
 - Financial institution employees are crucial in identifying financial exploitation.
- **Scope of Financial Exploitation**
 - Under-reporting
 - The reasons victims are reluctant to report or reveal exploitation:
Shame and embarrassment, self blame, fear of retaliation, denial, loyalty to the caregiver , dependence on the caregiver.
- **Major Project components:**
 - Model protocol for reporting,
 - Employee Training Manual,
 - Consumer brochures.

II IDENTIFYING FINANCIAL EXPLOITATION Time: 25 minutes

CHART/OVERHEAD: Key Terms

- **Definition of incapacitated adult:** An incapacitated adult is any adult who by reason of mental illness, mental deficiency, physical illness or disability to the extent that that individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual's person, or to the extent that the adult cannot effectively manage or apply that individual's estate to necessary ends.
- **Definition of dependent adult:** A dependent adult is any adult who is wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, and who would be in danger if that care or support were withdrawn.
- **Definition of financial exploitation:** Financial exploitation is the illegal or improper use of an incapacitated or dependent adult or his resources for another's profit or advantage.
 - This may happen without the victim's consent, or
 - When the victim is tricked, intimidated or forced into giving consent.
 - The dollar amount involved can be small or large.
 - An adult who lacks capacity does not have the ability to give valid consent.
- **Types of Exploitation:**

CHART/OVERHEAD: Types of Exploitation

- By Family, Acquaintances and Fiduciaries (Personal Relationship).
Reported to and investigated by Adult Protective Services
Methods of exploitation:
 - Theft
 - Mismanagement
 - Forgery
 - Undue influence, misrepresentation & fraud
- By Scam Artists (Confidence Crimes).
Reported to and investigated by law enforcement.
Methods of exploitation:

Person to Person Confidence Crimes

- # The Bank Examiner
- # The Pigeon Drop
- # The Home Repairman
- Mail Fraud
- Telephone Fraud
- Internet Fraud

- **What to Look For: Detecting financial exploitation.**

CHARTS/OVERHEADS: Suspicious Banking Activity
Suspicious Behavior

III. RESPONDING TO FINANCIAL EXPLOITATION Time: 25 minutes

- **Internal Reporting - Financial institution Procedures**

CHART/OVERHEAD: Employee Action Steps

- Security acts as a clearing house for reports to Adult Protective Services and to law enforcement. Security decides whether and where to report each case.
- Employee action steps when faced with a suspicious situation.

Examples of suspicious situations:

- Customer wishes to withdraw unusually large amount of cash.
- Customer accompanied by another person who is withdrawing a large amount of cash from the customer's account.
- Third party is claiming to act for customer (customer may/may not be present).

STEPS:

1. Learn reason for withdrawal.
2. Check authorization and documentation to act for customer.
3. Provide Confidence Crime/Financial Exploitation Alert form.
4. Check documentation (of third party).
5. Get photographic evidence and be able to describe suspect.
6. Consult with security/Oral report to security.
7. Interview customer alone if possible or ask customer to speak to security.
8. Notify law enforcement at one if you believe customer is in immediate danger.

Remember:

- Time is the enemy of the financial exploiter.
- Justify your concern and emphasize the commitment of your financial institution to protecting customers.
- Empathize with the customer and validate their feelings.
- Ask clear, non-threatening factual questions.
- Tell customers they aren't alone (people are reluctant to reveal exploitation).
- Don't say that you are concerned simply because a customer is elderly.
- Don't let anyone else speak for the customer. This is a "red flag" that something is wrong.

- **Flexibility**

Each financial institution should develop the internal procedure that best fit their needs.
Points to consider:

- When MUST the employee contact security?
- How much information should the employee gather before contacting security?
- Should security always conduct the interview with the customer?

- **When not to interview the victim:**

- If it will jeopardize victim's safety or financial institution thinks the victim will identify reporter

CHART/OVERHEAD: Three Step Reporting

- **Security Reports to Adult Protective Services (Personal Relationships)**

- Reasonable Cause to Suspect/Necessary Amount of Information:
The "hair on the back of your neck" test.
A suspicion is enough -- security does not have to confirm exploitation.
- Immediate Oral Report to Adult Protective Services.
- Contents of the report: Detailed financial information is not necessary to report.
- Written report filed for internal review (subject to Bank's protocol).

- **Security Reports to Law Enforcement (Scams)**

- Immediate oral report to law enforcement
- Written report filed for internal review (subject to Bank's protocol)

- **Adult Protective Services Response**

- Response time (emergency response).
- Services provided

- **Law Enforcement Response**

- **Institution Response to Investigation**

- All inquiries will be through Security.
- Information may be released on receipt of a consent to the release of information form signed by the victim.
- If the victim lacks capacity to consent (and no fiduciary is acting on their behalf) the financial institution should release information on receipt of:
 - Written consent of court appointed fiduciary
 - Subpoena.

IV. CASE DISCUSSION

Time: 30 minutes

NOTE: These case studies are simply provided as a guide to help students learn the material. However, instructors should feel free to adapt the scenarios to comport with their own financial institutions' policies and concerns.

CASE 1: MR. FREEMAN

You notice that an elderly gentleman, Mr. Freeman, makes frequent trips to the financial institution and is meticulous about tracking his finances. He never withdraws more than \$100 at a time from his account. At some point, Mr. Freeman's visits are less frequent and he seems confused about his account. On this day, he is accompanied by another person. That person begins to carry out Mr. Freeman's banking transaction with a check for a cash withdrawal of \$1,000 and mentions that Mr. Freeman is interested in arranging for him to become his power of attorney. He comments that he is Mr. Freeman's nephew and is currently providing valuable personal care.

Employee Issues

- **Is there something suspicious about this transaction?**

Students should note:

- (1) The banking activity is inconsistent with the customer's usual habits -- Mr. Freeman used to be aware and now seems confused about his account; this shift has occurred over a period of time.
- (2) Another person is attempting to withdraw the elder's funds and set up a power of attorney with no apparent benefit to the elder.
- (3) The representation that the person is Mr. Freeman's nephew was not made by Mr. Freeman himself. It is also unclear what the nature of the relationship is between the two, especially since the nephew has not been in the financial institution with Mr. Freeman in the past;
- (4) The nephew claims to be providing personal care, yet Mr. Freeman's condition has deteriorated.

- **Role play customer response to employee concerns:**

Have a student role play how he or she would interact with the elder. The trainer can act as the elder and present the student with different responses -- easy compliance or hostility -- to show how it is important for the employee to be flexible and accommodate different reactions. The trainer will want to ask the student how they would handle intrusions by the nephew who is attempting to complete the transaction.

- **Go over Employee Action Steps:**

In this case, the employee would:

(1) Learn the reason for the large withdrawal.

(2) Provide the alert form.

(3) Ask the elder to speak with security or management. As part of this discussion, show how employees should carefully go over the fraud alert form with the elder. Ask what an employee would do if the customer refuses to sign the alert form and insists on receiving the money immediately. Explain that the employee can tell the customer that financial institution policy requires that the transaction be approved by a manager. Ultimately, if the elder wants the money, he or she must be allowed to complete the withdrawal and the teller, or appropriate manager, should note the elder's name on the form along with the fact that the elder refused to sign.

Security/Management Issues

• **Add facts to the case study to show how security can develop more information.** The instructor can either read the following facts or, perhaps more effectively, role play an interview with a student in which the instructor, as the elder customer, reveals the following information:

"The young adult agrees, after some objection, to let the elder speak with security. It is presented as just a formality. Mr. Freeman tells the security officer that he did invite the nephew to live with him because he felt 'sorry' for him. He says that he doesn't 'really mind' giving him some financial help but wishes that his friends were not around so often. The elder insists that he is in no danger and wants to finish the transaction. The security officer persuades the elder to only withdraw half the money and to avoid executing a power of attorney that day."

- **Discuss why victims are reluctant to reveal exploitation.**
- **Go over proper interviewing technique with role plays based on this scenario.**
- **Is there enough information to make a report? Who should the report go to?** Although this scenario does not present a "smoking gun" of exploitation, the standard for reporting is simply "reasonable cause to suspect" that financial exploitation *may* be occurring. Security has enough to make an oral report of the situation to Adult Protective Services.

- **How should the report be made?** Security should make an oral report to APS. Also mention that, had the elder indicated that they were being obviously coerced, security would have wanted to arrange for law enforcement intervention *and* then notified APS.

For both Security and Employees

- **Provide understanding about how Adult Protective Services will handle such a case:** Explain that this scenario is based on a real incident (although, of course, the elder's name has been changed). Adult Protective Services investigated the situation and did, indeed, find that the nephew who was helping the elder had already appropriated a substantial amount of the elder's savings for their own use. Adult Protective Services obtained a restraining order through the local police against these individuals and enlisted a trusted family member to help the elder manage his finances and continue to live independently. By showing the origin of a case and its successful conclusion, you help students to understand how their initial intervention can ultimately result in the protection of a customer of the financial institution.

CASE 2: MRS. ANDERSON

Mrs. Anderson enters the financial institution. She looks to be about 70 years old. She is accompanied by a middle-aged man who is impeccably dressed. You have never seen her with this person before. At the teller window, she presents you with a check for \$5,000 in cash. You notice that she is somewhat nervous and that she is staring at you in a strange fashion. The man with her is standing at the teller window and clearly watching what is taking place.

Employee Issues

- **What might be happening here?** The large cash withdrawal and the unknown individual accompanying the elder to the teller window may indicate that a pigeon drop or bank examiner scam is taking place. The fact that Mrs. Anderson is nervous and suspicious may suggest that she has been told that tellers are committing financial crimes. This is the foundation for the bank examiner scam. If the elder is excited or happy at the teller window, it might be indicative of a pigeon drop, since the basis of this con is the elder's belief that he or she is about to obtain a large sum of cash for free.
- **Role play or discuss how to handle the situation?** Have a student role play or simply ask a student to describe how to respond to this situation. In this case, it is suggested that the financial institution employee:

(1) Calmly ask the elder the purpose of the withdrawal.

(2) Present the elder with the fraud alert form. Furthermore, the employee might ask the elder the identity of the gentleman monitoring the transaction. If the elder's response is implausible, evasive or confused, then attempt to have the elder meet with a manager or security. Preferably the elder should speak with these individuals alone.

Be clear with employees on whether you want them to talk with the elder or whether, as some financial institutions prefer, you want them to alert security at the first sign of trouble and have security do all interviewing.

- **What if the individual with the elder tries to leave?** This is a good time to talk about the need to act quickly when scam artists may be involved. Before the accompanying individual attempts to leave, summon police immediately to investigate the situation. In addition, if you notice that the individual with the elder has an accomplice waiting at the door of the financial institution or in a parked vehicle in front of the financial institution, these circumstances should be communicated to police.

Security/Management Issues

- **How would security interview the elder?** Security will want to find out who is trying to obtain the elder's cash. For example, learn how the elder got to the financial institution. Did the suspect con artists provide transport? Are they waiting in the parking lot? The answer to these and other questions will inform security whether it is necessary to immediately alert the police. Following a discussion with the elder, security will be in a position to decide whether the transaction is legitimate.

Many elders who have been approached by fake federal financial institution investigators sincerely believe that they are participating in a secret government investigation. Their distrust of your inquiry may suggest that this is happening. Be polite but persistent in explaining that the financial institution is merely trying to protect the elder's assets from a possible scam.

- **What if the elder insists on going through with the transaction?** Remember, elders are ultimately allowed to make their own financial decisions, no matter how reckless or ill advised. However, if security or a teller believes a crime is taking place, a report should be made to the police. Moreover, if the elder appears to lack capacity, the situation should be reported to Adult Protective Services for follow-up investigation into the elder's living situation.
- **Talk about the financial institution's current working relationship with law enforcement:** This is a good time to go over ways to enhance your working relationship with local law enforcement.
- **Assess the level of scam prevention at the financial institution:** This is a good time to think about your current efforts and whether there are ways to further educate your customers.

FINANCIAL INSTITUTION EMPLOYEE TRAINING: ELDER FINANCIAL EXPLOITATION

TRAINING AGENDA

Time: 30 minutes.

What is Financial Exploitation of Incapacitated or Dependent Adults?

- **Definition of financial exploitation:** Financial exploitation is the illegal or improper use of an incapacitated or dependent adult or his resources for another's profit or advantage.

This may happen without the victim's consent, or

When the victim is tricked, intimidated or forced into giving consent.

The amount may be small or large.

An adult who lacks capacity does not have the ability to give valid consent

- **Definition of incapacitated adult:** An incapacitated adult is any adult who by reason of mental illness, mental deficiency, physical illness or disability to the extent that that individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual's person, or to the extent that the adult cannot effectively manage or apply that individual's estate to necessary ends.
- **Definition of dependent adult:** A dependent adult is any adult who is wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, and who would be in danger if that care or support were withdrawn.

Financial exploitation can be devastating for the victim.

They can be victimized by relatives and friends ("loved ones"), or strangers (con artists).

Financial institution employees are crucial in identifying financial exploitation.

The reasons victims are reluctant to report exploitation:

Shame and embarrassment, self blame, fear of retaliation, denial, loyalty to the caregiver, dependence on the caregiver.

- **Types of Exploitation:**

" Type I -- Family, Acquaintances and Fiduciaries (Personal Relationship).

-Includes: theft, mismanagement, forgery, undue influence, misrepresentation & fraud. Is often combined with other forms of abuse and neglect.

-Reported to and investigated by Adult Protective Services

" Type II -- Scam Artists (Confidence Crimes).

-Includes person to person confidence crimes, mail fraud & telephone fraud

-Reported to and investigated by law enforcement.

- **What to Look For: Detecting financial exploitation.**

CHART/OVERHEAD: Suspicious Behavior

- **Internal Reporting - Financial institution Procedures**

CHART/OVERHEAD: Employee Action Steps

"Examples of suspicious situations:

Customer wishes to withdraw unusually large amount of cash.

Customer accompanied by other is withdrawing a large amount of cash.

Third party is claiming to act for customer (customer may/may not be present).

Employee action steps when faced with a suspicious situation.

- 1) Check reason for withdrawal.
- 2) Provide Financial Exploitation Alert form,
- 3) Check documentation (of third party),
- 4) Get photographic evidence,
- 5) Consult with security/Oral report to security,
- 6) Interview victim alone if possible/Oral report to security,
- 7) Emergency response.

Security decides whether and where to report each case.

- **Case Discussion**

APPENDICES

APPENDIX A

ADULT PROTECTIVE SERVICES ACT

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we do require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication is current to the end of the Second Special Session of the 122nd Legislature, which adjourned July 30, 2005, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office CAN NOT perform research for or provide legal advice or interpretation of Maine law. If you need legal assistance, please contact a qualified attorney.

Chapter 958-A: ADULT PROTECTIVE SERVICES ACT (HEADING: PL 1981, c. 527, @1 (new))

Subchapter 1: GENERAL PROVISIONS (HEADING: PL 1981, c. 527, @1 (new))

§3470. Title

This Act may be cited as the Adult Protective Services Act. [1981, c. 527, § 2 (new) .]

§3471. Declaration of policy and legislative intent

The Legislature recognizes that many adult citizens of the State, because of incapacitation or dependency, are unable to manage their own affairs or to protect themselves from abuse, neglect or exploitation. Often these persons can not find others able or willing to render assistance. The Legislature intends, through this Act, to establish a program of protective services designed to fill this need and to ensure its availability to all incapacitated and dependent adults who are faced with abuse, neglect, exploitation or the substantial risk of abuse, neglect or exploitation. It is also the intent of the Legislature to authorize only the least possible restriction on the exercise of personal and civil rights consistent with the person's need for services and to require that due process be followed in imposing those restrictions. Any requirements for disclosure of information contained in this chapter do not supersede federal law if federal law prohibits the disclosure of such information in the manner as set forth in this chapter. [2003, c. 653, §1 (amd) .]

§3472. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1981, c. 527, §2 (new) .]

1. Abuse. "Abuse" means the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; or the intentional, knowing or reckless deprivation of essential needs. "Abuse" includes acts and omissions. [2003, c. 653, §2 (amd) .]

2. Adult. "Adult" means any person who has attained 18 years of age or who is a legally emancipated minor. [2003, c. 653, §2 (amd) .]

2-A. Bureau. "Bureau" means the Department of Health and Human Services, Bureau of Elder and Adult Services. [2003, c. 653, §2 (amd); c. 689, Pt. B, §6 (rev) .]

3. Caretaker. "Caretaker" means any individual or institution who has or assumes the responsibility for the care of an adult. [1981, c. 527, §2 (new) .]

4. Commissioner. "Commissioner" means the Commissioner of Health and Human Services or a designated representative in the geographical area in which the person resides or is present. [2005, c. 397, Pt. A, §21 (amd) .]

5. Department. [2005, c. 397, Pt. A, §22 (rp) .]

6. Dependent adult. "Dependent adult" means an adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs. "Dependent adult" includes, but is not limited to, any of the following: [2003, c. 653, §2 (amd) .]

A. A resident of a nursing home licensed or required to be licensed under section 1817;

[2003, c. 653, §2 (new) .]

B. A resident of a facility providing assisted living services licensed or required to be licensed pursuant to section 7801; or
[2003, c. 653, §2 (new).]

C. A person considered a dependent person under Title 17-A, section 555.

[2003, c. 653, §2 (new).]

7. Emergency. "Emergency" refers to a situation in which: [2003, c. 653, §2 (amd).]

A. The incapacitated or dependent adult is in immediate risk of serious harm;

[1981, c. 527, §2 (new).]

B. The incapacitated or dependent adult is unable to consent to services that will diminish or eliminate the risk; and

[2003, c. 653, §2 (amd).]

C. There is no person legally authorized to consent to emergency services.

[2003, c. 653, §2 (amd).]

8. Emergency services. "Emergency services" refers to those services necessary to avoid serious harm. [2003, c. 653, §2 (amd).]

9. Exploitation. "Exploitation" means the illegal or improper use of an incapacitated or dependent adult or that adult's resources for another's profit or advantage. [2003, c. 653, §2 (amd).]

10. Incapacitated adult. "Incapacitated adult" means any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that that individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual's person, or to the extent the adult can not effectively manage or apply that individual's estate to necessary ends. [2003, c. 653, §2 (amd).]

11. Neglect. "Neglect" means a threat to an adult's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these. [1983, c. 313, §2 (amd).]

12. Protective services. "Protective services" means services that separate incapacitated or dependent adults from danger. Protective services include, but are not limited to, social, medical and psychiatric services necessary to preserve the incapacitated or dependent adult's rights and resources and to maintain the incapacitated or dependent adult's physical and mental well-being. [2003, c. 653, §2 (amd).]

Protective services may include seeking guardianship or a protective order under Title 18-A, Article 5. [2003, c. 653, §2 (amd).]

13. Serious harm. "Serious harm" means: [2003, c. 653, §2 (amd).]

A. Serious physical injury or impairment;

[1989, c. 259, §3 (amd).]

B. Serious mental injury or impairment that now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including, but not limited to, severe anxiety, depression or withdrawal, untoward aggressive behavior or similar serious dysfunctional behavior;

[2003, c. 653, §2 (amd).]

C. Sexual abuse or sexual exploitation; or

[2003, c. 653, §2 (amd).]

D. Serious waste or dissipation of resources.

[2003, c. 653, §2 (new).]

14. Serious injury. [1989, c. 259, §4 (rp).]

15. Sexual abuse or sexual exploitation. "Sexual abuse or sexual exploitation" means contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult's informed consent. [2003, c. 653, §2 (amd).]

§3473. Authorizations

1. General. The department shall act to: [2003, c. 653, §3 (amd).]

A. Protect incapacitated and dependent adults from abuse, neglect and exploitation and protect incapacitated and dependent adults in circumstances that present a substantial risk of abuse, neglect or exploitation;

[2003, c. 653, §3 (amd).]

B. Prevent abuse, neglect or exploitation of incapacitated and dependent adults;

[2003, c. 653, §3 (amd).]

C. Enhance the welfare of these incapacitated and dependent adults; and

[1981, c. 527, §2 (new).]

D. Promote self-care wherever possible.

[1981, c. 527, §2 (new).]

2. Reports. The department shall: [2003, c. 653, §4 (amd).]

A. Receive, promptly investigate and determine the validity of reports of alleged abuse, neglect or exploitation or the substantial risk of abuse, neglect or exploitation;

[1991, c. 711, §3 (amd).]

B. Take appropriate action, including providing or arranging for the provision of appropriate services and making referrals to law enforcement; and

[2003, c. 653, §4 (amd).]

C. Petition for guardianship or a protective order under Title 18-A, Article 5, when all less restrictive alternatives have been tried and have failed to protect the incapacitated adult.

[1981, c. 527, §2 (new).]

3. Appearance of designated employees in Probate Court. The commissioner may designate employees of the department to represent the department in Probate Court in: [2003, c. 653, §5 (amd).]

A. Matters relating to the performance of duties in uncontested guardianship or conservatorship or termination of guardianship or conservatorship proceedings; and

[2003, c. 653, §5 (amd).]

B. Requests for emergency guardianships arising from the need for emergency medical treatment or placement in assisted living programs, residential care facilities or nursing facilities or for orders necessary to apply for or preserve an estate in emergency situations.

[2003, c. 653, §5 (amd).]

§3474. Records; confidentiality, disclosure

1. Confidentiality of adult protective records. All department records which contain personally identifying information and are created or obtained in connection with the department's adult protective activities and activities related to an adult while under the jurisdiction of the department are confidential and subject to release only under the conditions of subsections 2 and 3. Within the department, the records shall be available only to and used by authorized departmental personnel and legal counsel for the department in carrying out their functions. [1981, c. 527, §2 (new).]

2. Optional disclosure of records. The department may disclose relevant information in the records to the following persons, with protection for the identity of reporters and other persons when appropriate: [2003, c. 653, §6 (amd).]

A. An agency responsible for investigating a report of adult abuse, neglect or exploitation when the investigation is authorized by statute or by an agreement with the department;

[2003, c. 653, §6 (amd).]

B. An advocacy agency conducting an investigation under chapter 961, United States Public Law 88-164, Title I, Part C or United States Public Law 99-319, except as provided in subsection 3, paragraph D;

[1989, c. 7, Pt. N, §1 (amd).]

C. A physician treating an incapacitated or dependent adult who the physician reasonably suspects may be abused, neglected or exploited;

[2003, c. 653, §6 (amd).]

D. An incapacitated or dependent adult named in a record who is reported to be abused, neglected or exploited or the caretaker of the incapacitated or dependent adult;

[2003, c. 653, §6 (amd).]

E. A person having the legal responsibility or authorization to care for, evaluate, treat or supervise an incapacitated or dependent adult;

[1987, c. 714, §3 (amd).]

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the research and the commissioner or the commissioner's designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent must be obtained by the department prior to the contact;

[1989, c. 858, §6 (amd).]

G. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857;

[2003, c. 653, §6 (amd).]

H. A relative by blood, marriage or adoption of an incapacitated or dependent adult named in a record; and

[2003, c. 653, §6 (amd).]

I. A member of a panel appointed by the department or the Office of the Attorney General to review the death or serious injury of an incapacitated or dependent adult or a child.

[2003, c. 653, §6 (new).]

3. Mandatory disclosure of records. The department shall disclose relevant information in the records to the following persons: [2003, c. 653, §7 (amd).]

A. The guardian ad litem of an incapacitated or dependent adult named in a record who is reported to be abused, neglected or exploited;

[1981, c. 527, §2 (new).]

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court. Access must be limited to in camera inspection unless the court determines that disclosure of the information is necessary for the resolution of an issue pending before it;

[2003, c. 653, §7 (amd).]

C. A grand jury on its determination that access to those records is necessary in the conduct of its official business; and

[RR 1991, c. 2, §80 (cor).]

D. An advocacy agency conducting an investigation under chapter 961, United States Public Law 88-164, Title I, Part C or United States Public Law 99-319, regarding a developmentally disabled person or mentally ill person who is or who, within the last 90 days, was residing in a facility rendering care or treatment, when a complaint has been received by the agency or there is probable cause to believe that that individual has been subject to abuse or neglect, and that person does not have a legal guardian or the person is under public guardianship. The determination of which information and records are relevant to the investigation is made by agreement between the department and the agency.

[RR 1991, c. 2, §81 (cor).]

§3475. Penalty for violations

A person who knowingly violates a provision of this chapter commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. Any licensed, registered, accredited or certified professional who has been adjudged to have violated a provision of this chapter must, in addition to any financial penalty, be reported by the court or the department to the appropriate professional licensing organization, registration board, accrediting unit or facility. [2003, c. 653, §8 (amd).]

§3476. Spiritual treatment

1. Treatment not considered abuse, neglect or exploitation. An incapacitated or dependent adult shall not be considered to be abused, neglected or exploited solely because treatment is by spiritual means by an accredited practitioner of a recognized religious organization. [1981, c. 527, § 2 (new).]

2. Treatment to be considered if requested. When medical treatment is authorized, under this chapter, treatment by spiritual means by an accredited practitioner of a recognized religious organization may also be considered if requested by the incapacitated or disabled adult or his caretaker. [1981, c. 527, § 2 (new).]

Subchapter 1-A: REPORTING OF ABUSE, NEGLECT OR EXPLOITATION (HEADING: PL 1981, c. 705, @2 (new))

§3477. Persons mandated to report suspected abuse, neglect or exploitation

1. Report required. The following persons immediately shall report to the department when the person has reasonable cause to suspect that an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation: [2003, c. 653, §9 (rpr).]

A. While acting in a professional capacity:

- (1) An allopathic or osteopathic physician;
- (2) A medical intern;
- (3) A medical examiner;
- (4) A physician's assistant;
- (5) A dentist;
- (6) A chiropractor;
- (7) A podiatrist;
- (8) A registered or licensed practical nurse;
- (9) A certified nursing assistant;
- (10) A social worker;
- (11) A psychologist;
- (12) A pharmacist;
- (13) A physical therapist;
- (14) A speech therapist;
- (15) An occupational therapist;
- (16) A mental health professional;
- (17) A law enforcement official;
- (18) Emergency room personnel;
- (19) An ambulance attendant;
- (20) An emergency medical technician;
- (21) Unlicensed assistive personnel;
- (22) A humane agent employed by the Department of Agriculture, Food and Rural Resources; or
- (23) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications;

[2003, c. 653, §9 (rpr).]

B. Any person who has assumed full, intermittent or occasional responsibility for the care or custody of the incapacitated or dependent adult, regardless of whether the person receives compensation; or

[2003, c. 653, §9 (rpr).]

C. Any person affiliated with a church or religious institution who serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in that capacity, regardless of whether the person receives compensation.

[2003, c. 653, §9 (rpr).]

The duty to report under this subsection applies to individuals who must report directly to the department. A supervisor or administrator of a person making a report under this section may not impede or inhibit the reporting, and a person making a report may not be subject to any sanction for making a report. Internal procedures to facilitate, ensure confidentiality of and apprise supervisors and administrators of reports may be established as long as those procedures are not inconsistent with this chapter.

[2003, c. 653, §9 (rpr).]

2. Reports. Reports regarding abuse, neglect or exploitation must be made immediately by telephone to the department and must be followed by a written report within 48 hours if requested by the department. The reports must contain the name and address of the involved adult; information regarding the nature and extent of the abuse, neglect or exploitation; the source of the report; the person making the report; that person's occupation; and where that person can be contacted. The report may contain any other information that the reporter believes may be helpful. [2003, c. 653, §10 (amd).]

3. Confidentiality in case of treatment of individual suspected of causing abuse, neglect or exploitation. This section does not require any person acting in that person's professional capacity to report when all of the following requirements are met:

[2003, c. 653, §11 (amd).]

A. The factual basis for knowing or suspecting abuse, neglect or exploitation of an adult covered under this subchapter derives from the professional's treatment of the individual suspected of causing the abuse, neglect or exploitation;

[1981, c. 705, Pt. E, §2 (new).]

B. The treatment was sought by the individual for a problem relating to the abuse, neglect or exploitation; and

[1981, c. 705, Pt. E, §2 (new).]

C. In the opinion of the person required to report, the abused, neglected or exploited adult's life or health is not immediately threatened.

[1981, c. 705, Pt. E, §2 (new).]

4. Confidentiality in case of treatment of individual suspected of being abused, neglected or exploited. This section does not require any person acting in that person's professional capacity to report when all of the following requirements are met: [2003, c. 653, §12 (new).]

A. The factual basis for knowing or suspecting abuse, neglect or exploitation of an adult covered under this subchapter derives from the professional's treatment of the individual suspected of being abused, neglected or exploited;

[2003, c. 653, §12 (new).]

B. The treatment was sought by the individual for a problem relating to the abuse, neglect or exploitation; and

[2003, c. 653, §12 (new).]

C. In the opinion of the person required to report, the individual is not incapacitated and the individual's life or health is not immediately threatened.

[2003, c. 653, §12 (new).]

§3478. Mandatory reporting to medical examiner for post-mortem investigation

A person required to report cases of known or suspected abuse or neglect, who knows or has reasonable cause to suspect that an adult has died as a result of abuse or neglect, shall report that fact to the appropriate authority as provided in section 3026. An adult shall not be considered to be abused or neglected solely because he was provided with treatment by spiritual means by an accredited practitioner of a recognized religious organization. [1983, c. 343, § 1 (amd).]

§3479. Optional reporting

Any person may make a report to the department when that person has reasonable cause to suspect an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation. [2003, c. 653, §13 (amd).]

1. Dependent. [1989, c. 858, §12 (rp).]

2. Incapacitated. [1989, c. 858, §12 (rp).]

3. Suspected incapacity. [1989, c. 858, §12 (rp).]

§3479-A. Immunity from liability

1. Reporting and proceedings. A person participating in good faith in reporting under this subchapter, or in a related adult protection investigation or proceeding, is immune from any civil liability that might otherwise result from these actions, including, but not limited to, any civil liability that might otherwise arise under state or local laws or rules regarding confidentiality of information. [2003, c. 653, §14 (amd).]

2. Presumption of good faith. In a proceeding regarding immunity from liability, there shall be a rebuttable presumption of good faith. [1981, c. 705, Pt. E, §2 (new).]

Subchapter 2: INVESTIGATIONS AND PROTECTIVE SERVICES (HEADING: PL 1981, c. 527, @1 (new))

§3480. Investigations

1. Subpoenas and obtaining criminal history. The commissioner, his delegate or the legal counsel for the department may:

A. Issue subpoenas requiring persons to disclose or provide to the department information or records in their possession that are necessary and relevant to an investigation of a report of suspected abuse, neglect or exploitation or to a subsequent adult protective proceeding, including, but not limited to, health care information that is confidential under section 1711-C.

(1) The department may apply to the District Court and Probate Court to enforce a subpoena.

(2) A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of turning over or providing information or records to the department; and

[2003, c. 653, §15 (amd).]

B. Obtain nonconviction data and other criminal history record information under Title 16, section 611, which he deems relevant to a case of alleged abuse, neglect or exploitation.

[1981, c. 527, §2 (new).] [2003, c. 653, §15 (amd).]

2. Confidentiality. Information or records obtained by subpoena shall be treated in accordance with section 3474. [1981, c. 527, §2 (new).]

3. Right of entry and access to records of licensed facilities. The department and any duly designated officer or employee of the department have the right to enter upon and into the premises of any facility licensed under sections 1817 and 7801 in order to obtain information necessary and relevant to an investigation of a report of suspected abuse, neglect or exploitation or to a subsequent adult protective proceeding. The department has access to all records in the facility's possession that are relevant to the investigation of a report of suspected abuse, neglect or exploitation and any subsequent adult protective proceeding and is not required to issue a subpoena to the facility before obtaining access to the records. [1995, c. 696, Pt. B, §4 (new).]

§3480-A. Confidential communications

The confidential quality of communications under section 1711-C, Title 24-A, section 4224 and Title 32, sections 1092-A and 7005 is abrogated to the extent allowable under federal law in relation to required reporting or cooperating with the department in an investigation or other protective activity under this chapter. Information released to the department pursuant to this section must be kept confidential and may not be disclosed by the department except as provided in section 3474. [2003, c. 653, §16 (new).]

§3481. Providing for protective services with the consent of the person; withdrawal of consent; care taker refusal

When it has been determined that an incapacitated or dependent adult is in need of protective services, the department shall immediately provide or arrange for protective services, provided that the adult consents. [1981, c. 527, §2 (new).]

1. Consent. If an incapacitated or dependent adult does not consent to the receipt of protective services, or if he withdraws consent, the service shall not be provided. [1981, c. 527, §2 (new).]

2. Consent refused. When a private guardian or conservator of an incapacitated adult who consents to the receipt of protective services refuses to allow those services to be provided to the incapacitated adult, the department may petition the Probate Court for removal of the guardian pursuant to Title 18-A, section 5-307, or for removal of the conservator pursuant to Title 18-A, section 5-415. When a caretaker or guardian of an incapacitated adult who consents to the receipt of protective services refuses to allow those services to be provided to the incapacitated adult, the department may petition the Probate Court for temporary guardianship pursuant to Title 18-A, section 5-310-A or for a protective arrangement pursuant to Title 18-A, section 5-409. [1993, c. 652, §8 (amd).]

§3482. Providing for protective services to incapacitated adults who lack the capacity to consent

If the department reasonably determines that an incapacitated adult is being abused, neglected or exploited and lacks capacity to consent to protective services, the department may petition the Probate Court for guardianship or conservatorship, in accordance with Title 18-A, section 5-601. The petition must allege specific facts sufficient to show that the incapacitated adult is in need of protective services and lacks capacity to consent to them. [1981, c. 527, §2 (new).]

§3483. Emergency intervention; authorized entry of premises; immunity of petitioner

1. Action. When the court has exercised the power of a guardian or has appointed the department temporary guardian pursuant to Title 18-A, section 5-310-A, and the ward or a caretaker refuses to relinquish care and custody to the court or to the department, then at the request of the department, a law enforcement officer may take any necessary and reasonable action to obtain physical custody of the ward for the department. Necessary and reasonable action may include entering public or private property with a warrant based on probable cause to believe that the ward is there. [1993, c. 652, §9 (amd).]

2. Liability. No petitioner shall be held liable in any action brought by the incapacitated adult if the petitioner acted in good faith. [1981, c. 527, §2 (new).]

§3484. Payment for protective services

At the time the department makes an evaluation of the case reported, it must be determined, according to regulations set by the commissioner, whether the incapacitated or dependent adult is financially capable of paying for the essential services. To the extent that assets are available to the incapacitated or dependent adult, ward or protected person, the cost of services must be borne by the estate of the person receiving those services. [2003, c. 653, §17 (amd).]

§3485. Reporting abuse

Upon finding evidence indicating that a person has abused, neglected or exploited an incapacitated or dependent adult, resulting

in serious harm, the department shall notify the district attorney or law enforcement agency. [2003, c. 653, §18 (amd).]

§3486. Cooperation

All other state and local agencies as well as private agencies receiving public funds shall cooperate with the department in rendering protective services on behalf of incapacitated and dependent adults. [1981, c. 527, § 2 (new).]

§3487. Adoption of standards

The department shall adopt standards and other procedures and guidelines with forms to insure the effective implementation of this chapter. [1981, c. 527, § 2 (new).]

Subchapter 3: PLACEMENT AND THERAPEUTIC SERVICES FOR DEPENDENT AND INCAPACITATED ADULTS
WHO ARE NOT MENTALLY RETARDED (HEADING: PL 2003, c. 653, @19 (rp))

§3488. Placement (REPEALED)

§3489. Levels (REPEALED)

§3490. Therapeutic services (REPEALED)

§3491. Training team (REPEALED)

§3492. Rules (REPEALED)

Subchapter 4: RULES (HEADING: PL 2003, c. 653, @20 (new))

§3493. Rules

The department may adopt rules in accordance with Title 5, chapter 375, subchapter 2-A to carry out this chapter. [2003, c. 653, §20 (new).]

APPENDIX B

CONFIDENTIAL FINANCIAL RECORDS ACT

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we do require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication is current to the end of the Second Special Session of the 122nd Legislature, which adjourned July 30, 2005, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office CAN NOT perform research for or provide legal advice or interpretation of Maine law. If you need legal assistance, please contact a qualified attorney.

Chapter 16: CONFIDENTIAL FINANCIAL RECORDS

§161. Definitions; exemptions

1. Definitions. [2001, c. 667, Pt. A, §5 (rp).]

1-A. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 44, §11 (amd); c. 182, §16 (amd); c. 262, Pt. B, §2 (new).]

A. "Affiliate" has the same meaning as in section 131, subsection 1-A.

[2001, c. 262, Pt. B, §2 (new).]

B. "Credit union authorized to do business in this State" has the same meaning as in section 131, subsection 12-A.

[2001, c. 262, Pt. B, §2 (new).]

C. "Customer" means any person as that term "person" is defined in section 131, subsection 30 who utilized or is utilizing any service of a financial institution authorized to do business in this State or a credit union authorized to do business in this State or for whom a financial institution authorized to do business in this State or a credit union authorized to do business in this State is acting or has acted as a fiduciary in relation to an account maintained in the person's name. In addition, "customer" means any person who provides information to a financial institution authorized to do business in this State or a credit union authorized to do business in this State in an attempt to utilize any service of that financial institution or credit union.

[2001, c. 262, Pt. B, §2 (new).]

D. "Financial institution authorized to do business in this State" has the same meaning as in section 131, subsection 17-A.

[2001, c. 262, Pt. B, §2 (new).]

E. "Financial records" means the originals or copies of records held by a financial institution authorized to do business in this State or a credit union authorized to do business in this State or their agents or affiliates pertaining to a customer's relationship with the financial institution or credit union and includes information derived from such records.

[2001, c. 262, Pt. B, §2 (new).]

F. "Supervisory agency" means:

- (1) The Federal Deposit Insurance Corporation;
- (2) The Office of Thrift Supervision;
- (3) The Federal Home Loan Bank Board;
- (4) The National Credit Union Administration;
- (5) The Federal Reserve Board;
- (6) The Office of the Comptroller of the Currency;
- (7) The Bureau of Financial Institutions within the Department of Professional and Financial Regulation;
- (8) The Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation;
- (9) The Bureau of Insurance within the Department of Professional and Financial Regulation;

(10) The Office of Securities within the Department of Professional and Financial Regulation; and

(11) The United States Securities and Exchange Commission.

[2001, c. 262, Pt. B, §2 (new).]

2. Exemptions. This chapter does not prohibit: [2001, c. 262, Pt. B, §3 (amd).]

A. The preparation, examination, handling or maintenance of any financial records by any officer, employee or agent of a financial institution authorized to do business in this State or credit union authorized to do business in this State having custody of such records or the examination of such records by a certified public accountant engaged by the financial institution or credit union to perform an independent audit;

[2001, c. 262, Pt. B, §3 (amd).]

B. The examination of any financial records by, or the furnishing of financial records by a financial institution authorized to do business in this State or credit union authorized to do business in this State to, any officer, employee or agent of a supervisory agency for use solely in the exercise of the duties of the officer, employee or agent;

[2001, c. 262, Pt. B, §3 (amd).]

C. The publication of data furnished from financial records relating to customers when the data can not be identified to any particular customer or account;

[2001, c. 262, Pt. B, §3 (amd).]

D. The making of reports or returns required under the United States Internal Revenue Code, Chapter 61, including the submission of information concerning interest earned on accounts, investigatory activity authorized by the United States Internal Revenue Code and any use to which the reports or returns would be subjected once submitted;

[2001, c. 262, Pt. B, §3 (amd).]

E. Furnishing information permitted to be disclosed under the Uniform Commercial Code concerning the dishonor of any negotiable instrument;

[1977, c. 416 (new).]

F. The exchange in the regular course of business of credit information between a financial institution authorized to do business in this State or credit union authorized to do business in this State and other financial institutions or credit unions or commercial enterprises, directly or through a consumer reporting agency;

[2001, c. 262, Pt. B, §3 (amd).]

G. Any disclosure of financial records made pursuant to section 226;

[2001, c. 262, Pt. B, §3 (amd).]

H. The examination of the financial records authorized by Title 36, section 112 or section 176-A, subsection 4;

[1989, c. 880, Pt. E, §1 (amd).]

I. Any disclosure of financial records made pursuant to Title 22, section 16, 17 or 4314;

[2001, c. 262, Pt. B, §3 (amd).]

J. Any disclosure of financial records made under the Federal Currency and Foreign Transactions Reporting Act, Public Law 91-508, 31 United States Code, Section 5311, et seq., as amended;

[2001, c. 262, Pt. B, §3 (amd).]

K. The examination or furnishing of any financial records by a financial institution authorized to do business in this State or credit union authorized to do business in this State to any officer, employee or agent of the Treasurer of State for use solely in the exercise of that officer's, employee's or agent's duties under Title 33, chapter 41;

[2001, c. 262, Pt. B, §3 (amd).]

L. The exchange of financial records between a financial institution authorized to do business in this State or credit union authorized to do business in this State and a consumer reporting agency or between or among a financial institution authorized to do business in this State or credit union authorized to do business in this State and its subsidiaries, employees, agents or affiliates, including those permitted under Title 10, chapter 210 or 15 United States Code, Chapter 41;

[2001, c. 262, Pt. B, §3 (amd).]

M. The sharing of information to the extent permitted by the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as

adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001). This paragraph is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24; or

[2001, c. 262, Pt. B, §3 (new).]

N. The sharing of financial records with affiliates other than as permitted under paragraphs L and M.

[2001, c. 262, Pt. B, §3 (new).]

PL 1977, Ch. 416, § (NEW) .
PL 1977, Ch. 696, §115 (AMD) .
PL 1981, Ch. 501, §28 (AMD) .
PL 1981, Ch. 706, §1 (AMD) .
PL 1983, Ch. 784, §1-3 (AMD) .
PL 1985, Ch. 311, §2-4 (AMD) .
PL 1985, Ch. 647, §1 (AMD) .
PL 1985, Ch. 668, §1 (AMD) .
PL 1985, Ch. 819, §A14 (AMD) .
PL 1989, Ch. 368, §1-3 (AMD) .
PL 1989, Ch. 880, §E1 (AMD) .
PL 1995, Ch. 86, §1 (AMD) .
PL 1995, Ch. 419, §4,5 (AMD) .
PL 1997, Ch. 315, §10-12 (AMD) .
PL 1997, Ch. 398, §L6 (AMD) .
PL 1997, Ch. 453, §1 (AMD) .
PL 1997, Ch. 508, §A3 (AFF) .
PL 1997, Ch. 508, §B1 (AMD) .
PL 1999, Ch. 127, §A21 (AMD) .
PL 1999, Ch. 218, §1 (AMD) .
PL 2001, Ch. 44, §14 (AFF) .
PL 2001, Ch. 44, §6 (AMD) .
PL 2001, Ch. 262, §B1-3 (AMD) .
PL 2001, Ch. 667, §A5 (AMD) .

§162. Disclosure of financial records prohibited; exceptions

A financial institution authorized to do business in this State or credit union authorized to do business in this State or its affiliates may not disclose to any person, except to the customer or the customer's duly authorized agent, any financial records relating to that customer of that financial institution or credit union unless: [2001, c. 262, Pt. B, §4 (amd).]

1. Authorized disclosure. The customer has authorized disclosure to the person; [1997, c. 537, §1 (amd); §62 (aff).]

2. Disclosure in response to legal process. The financial records are disclosed in response to a lawful subpoena, summons, warrant or court order that meets the requirements of section 163; [2001, c. 211, §1 (amd).]

3. Disclosure in response to a request by the Department of Health and Human Services. The financial records are disclosed in response to a request for information by the Department of Health and Human Services for purposes related to establishing, modifying or enforcing a child support order; or [2001, c. 211, §1 (amd); 2003, c. 689, Pt. B, §6 (rev).]

4. Disclosure in response to a request by the Department of Labor. The financial records are disclosed in response to a notice of levy issued by the Department of Labor pursuant to Title 26, section 1233. [2001, c. 211, §2 (new).]

PL 1977, Ch. 416, § (NEW) .
PL 1997, Ch. 537, §1 (AMD) .
PL 1997, Ch. 537, §62 (AFF) .
PL 2001, Ch. 211, §1,2 (AMD) .
PL 2001, Ch. 262, §B4 (AMD) .
PL 2003, Ch. 689, §B6 (REV) .

§163. Subpoena, summons, warrant or court order

1. Service. A financial institution authorized to do business in this State or credit union authorized to do business in this State shall disclose financial records under section 162 pursuant to a subpoena, summons, warrant or court order that on its face appears to have been issued upon lawful authority only if the subpoena, summons, warrant or court order is served upon the customer prior to disclosure by the financial institution or credit union. The agency or person requesting the disclosure of financial records shall certify in writing to the financial institution or credit union the fact that the subpoena, summons, warrant or court order has been served upon the customer. The court for good cause shown may delay or dispense with service of the subpoena, summons, warrant or court order upon the customer. The court shall delay or dispense with service of the subpoena, summons, warrant or court order upon the customer upon notice by the Attorney General, the Attorney General's designee or the District Attorney that service upon the customer would not be in the public interest. A subpoena, summons or warrant issued in connection with a criminal proceeding or state or federal grand jury proceeding, a request for information by the Department of Health and Human Services for purposes related to establishing, modifying or enforcing a child support order or a trustee process lawfully issued need not be served upon the customer. [2001, c. 262, Pt. B, §5 (amd); 2003, c. 689, Pt. B, §6 (rev).]

PL 1977, Ch. 416, § (NEW) .
PL 1985, Ch. 647, §2 (AMD) .
PL 1997, Ch. 16, §1 (AMD) .
PL 1997, Ch. 537, §2 (AMD) .
PL 1997, Ch. 537, §62 (AFF) .
PL 1999, Ch. 197, §1 (AMD) .
PL 2001, Ch. 262, §B5 (AMD) .
PL 2003, Ch. 689, §B6 (REV) .

§164. Penalties

1. Violation. Any officer or employee of a financial institution authorized to do business in this State, credit union authorized to do business in this State, affiliate or consumer reporting agency who intentionally or knowingly furnishes financial records in violation of this chapter commits a civil violation for which the superintendent may assess a civil penalty of not more than \$5,000 per violation. Any financial institution authorized to do business in this State or credit union authorized to do business in this State that intentionally or knowingly furnishes financial records in violation of this chapter or intentionally or knowingly allows an affiliate to furnish financial records in violation of this chapter commits a civil violation for which the superintendent may assess a civil penalty of not more than \$10,000 per violation. Any financial institution authorized to do business in this State or credit union authorized to do business in this State or any agent or employee of a financial institution or credit union making a disclosure of financial records in good-faith reliance upon the certificate of agency or person requesting the disclosure, that the provisions of section 163 requiring prior notice to the customer have been complied with, is not liable to the customer for the disclosures and is not liable for any civil penalties under this section. [2001, c. 262, Pt. B, §6 (amd).]

2. Inducing violation. Any person who intentionally or knowingly induces or attempts to induce any officer or employee of a financial institution authorized to do business in this State, credit union authorized to do business in this State or consumer reporting agency to disclose financial records in violation of this chapter commits a civil violation for which the superintendent may assess a civil penalty of not more than \$10,000 per violation. [2001, c. 262, Pt. B, §6 (amd).]

PL 1977, Ch. 416, § (NEW) .
PL 1985, Ch. 647, §3 (AMD) .
PL 1991, Ch. 824, §A11 (AMD) .
PL 2001, Ch. 262, §B6 (AMD) .

APPENDIX C IMPROVIDENT TRANSFERS OF TITLE

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we do require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication is current to the end of the Second Special Session of the 122nd Legislature, which adjourned July 30, 2005, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office CAN NOT perform research for or provide legal advice or interpretation of Maine law. If you need legal assistance, please contact a qualified attorney.

Chapter 20: IMPROVIDENT TRANSFERS OF TITLE (HEADING: PL 1987, c. 699, @1 (new))

§1021. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 699, §1 (new).]

1. Dependent. "Dependent," with respect to an elderly person, means wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, because the elderly person: [1987, c. 699, §1 (new).]

A. Suffers from a significant limitation in mobility, vision, hearing, emotional or mental functioning or the ability to read or write; or

[1987, c. 699, §1 (new).]

B. Is suffering or recovering from a major illness or is facing or recovering from major surgery.

[1987, c. 699, §1 (new).]

2. Elderly person. "Elderly person" means a person who is 60 years of age or older. [1987, c. 699, §1 (new).]

3. Independent counsel. "Independent counsel" means an attorney retained by the elderly dependent person to represent only that person's interests in the transfer. [1987, c. 699, §1 (new).]

4. Less than full consideration. "Less than full consideration," with respect to a transfer of property, means the transferee pays less than fair market value for the property or the transfer is supported by past consideration. [1987, c. 699, §1 (new).]

5. Major transfer of personal property or money. "Major transfer of personal property or money" means a transfer of money or items of personal property which represent 10% or more of the elderly dependent person's estate. [1987, c. 699, §1 (new).]

6. Transfer. "Transfer" does not include testamentary transfers, which are outside the scope of this chapter. [1989, c. 238, §1 (new).]

PL 1987, Ch. 699, §1 (NEW).

PL 1989, Ch. 238, §1,4 (AMD).

§1022. Undue influence

1. Presumption. In any transfer of real estate or major transfer of personal property or money for less than full consideration or execution of a guaranty by an elderly person who is dependent on others to a person with whom the elderly dependent person has a confidential or fiduciary relationship, it is presumed that the transfer or execution was the result of undue influence, unless the elderly dependent person was represented in the transfer or execution by independent counsel. When the elderly dependent person successfully raises the presumption of undue influence by a preponderance of the evidence and when the transferee or person who benefits from the execution of a guaranty fails to rebut the presumption, the elderly dependent person is entitled to avoid the transfer or execution and entitled to the relief set forth in section 1024. [2003, c. 236, §1 (amd).]

2. Confidential or fiduciary relationship. For the purpose of this section, the transfer of property or execution of a guaranty is

deemed to have been made in the context of a confidential or fiduciary relationship if the transferee or person who benefits from the execution of a guaranty had a close relationship with the elderly dependent person prior to the transfer or execution. Confidential or fiduciary relationships include the following: [2003, c. 236, §1 (amd).]

A. A family relationship between the elderly dependent person and the transferee or person who benefits from the execution of a guaranty, including relationships by marriage and adoption;

[2003, c. 236, §1 (amd).]

B. A fiduciary relationship between the elderly dependent person and the transferee or person who benefits from the execution of a guaranty, such as with a guardian, conservator, trustee, accountant, broker or financial advisor;

[2003, c. 236, §1 (amd).]

C. A relationship between an elderly dependent person and a physician, nurse or other medical or health care provider;

[1987, c. 699, §1 (new).]

D. A relationship between the elderly dependent person and a psychologist, social worker or counselor;

[1987, c. 699, §1 (new).]

E. A relationship between the elderly dependent person and an attorney;

[1987, c. 699, §1 (new).]

F. A relationship between the elderly dependent person and a priest, minister, rabbi or spiritual advisor;

[1987, c. 699, §1 (new).]

G. A relationship between the elderly dependent person and a person who provides care or services to that person whether or not care or services are paid for by the elderly person;

[1987, c. 699, §1 (new).]

H. A relationship between an elderly dependent person and a friend or neighbor; or

[1987, c. 699, §1 (new).]

I. A relationship between an elderly dependent person and a person sharing the same living quarters.

[1987, c. 699, §1 (new).]

When any of these relationships exist and when a transfer or execution is made to a corporation or organization primarily on account of the membership, ownership or employment interest or for the benefit of the fiduciary or confidante, a fiduciary or confidential relationship with the corporation or organization is deemed to exist. [2003, c. 236, §1 (amd).]

PL 1987, Ch. 699, §1 (NEW).

PL 2003, Ch. 236, §1 (AMD).

§1023. Civil action; relief available

1. Civil action. A civil action may be brought to obtain relief under this chapter by an elderly dependent person, that person's legal representative or the personal representative of the estate of an elderly dependent person. [2003, c. 236, §2 (amd).]

2. Relief available; protected transfers and executions. When a court finds that a transfer of property or execution of a guaranty was the result of undue influence, it shall grant appropriate relief enabling the elderly dependent person to avoid the transfer or execution, including the rescission or reformation of a deed or other instrument, the imposition of a constructive trust on property or an order enjoining use of or entry on property or commanding the return of property. When the court finds that undue influence is a good and valid defense to a transferee's suit on a contract to transfer the property or a suit of a person who benefits from the execution of a guaranty on that guaranty, the court shall refuse to enforce the transfer or guaranty. [2003, c. 236, §2 (amd).]

No relief obtained or granted under this section may in any way affect or limit the right, title and interest of good faith purchasers, mortgagees, holders of security interests or other 3rd parties who obtain an interest in the transferred property for value after its transfer from the elderly dependent person. No relief obtained or granted under this section may affect any mortgage deed to the extent of value given by the mortgagee. [2003, c. 236, §2 (amd).]

3. Statute of limitations. The limitations imposed by Title 14, section 752, apply to all actions brought under this chapter. [1987, c. 699, §1 (new).]

PL 1987, Ch. 699, §1 (NEW).

PL 1989, Ch. 238, §2,4 (AMD).

PL 2003, Ch. 236, §2 (AMD).

§1024. Other common law and statutory causes of action and relief still available

Nothing in this chapter may be construed to abrogate any other causes of action or relief at law or equity to which elderly dependent persons are entitled under other laws or at common law. [1987, c. 699, §1 (new).]

PL 1987, Ch. 699, §1 (NEW).

§1025. Title practices

This chapter does not require that language showing compliance with this chapter be included in a deed and does not require that evidence of compliance with this chapter be recorded in the registry of deeds. Any attempt to record such evidence is void and has no effect on title. [1989, c. 238, §3 (new).]

PL 1989, Ch. 238, §3,4 (NEW).

APPENDIX D

CUSTOMER FRAUD ALERT FORM (SAMPLES)
--

CUSTOMER FRAUD ALERT WARNING

Before making this cash withdrawal ask yourself these questions:

- Has anyone asked you to withdraw cash from your account to show good faith or to assist in an investigation?
- Have you been asked to withdraw cash to pay for goods or services prior to delivery?
- Is there a stranger / new acquaintance waiting outside in the lobby, outside the financial institution or at a designated location for this cash withdrawal?

If the answer is “**yes**” to any of these questions, you may be the victim of a fraud. You should report this to law enforcement immediately.

CUSTOMER CASH WITHDRAWAL/FRAUD ALERT FORM

This form is provided as a customer service to alert you to the danger of **FRAUD**.

Con artists often trick their victims into withdrawing large sums of cash under false pretenses. Listed below are some common types of scams.

- Con artists sometime pose as financial institution or law enforcement officials. They ask victims to withdraw cash to help with their investigation. **NO FINANCIAL INSTITUTION OR LAW ENFORCEMENT OFFICIAL WILL MAKE SUCH A REQUEST.**
- Con artists may pose as home repair contractors or salesmen. They convince their victims they need certain repairs, service or product and ask for large cash down payments in advance. **MAKE SURE YOU ARE DEALING WITH A LEGITIMATE COMPANY BEFORE MAKING ANY PAYMENT.**
- Con artists are very convincing. If after reading this warning, you believe you may be the victim of a scam, you should notify law enforcement immediately.

I have read this Customer Cash Withdrawal / Fraud Alert Form and understand the precautions taken by _____ (Financial Institution) _____. However, I still request the immediate withdrawal, in cash, in the amount of \$ _____ from my account # _____.

Customer Name: _____

Customer Signature: _____

Bank Officer: _____

Date: _____ Time: _____ Branch: _____

<p style="text-align: center;">APPENDIX E</p> <p style="text-align: center;">FUNDING SUPPORT FOR THE 1995 MASSACHUSETTS PROJECT</p>

The model for the Maine Reporting Project for Financial Institutions and materials is the 1995 Massachusetts Bank Reporting Project and has been modified with their permission. The following is a description of the funding support for the 1995 Massachusetts Project:

“This publication was prepared by the Commonwealth of Massachusetts Executive Office of Elder Affairs (EOEA) Elder Protective Services Program, in conjunction with the Office of the Attorney General Elderly Protection Project, the executive Office of Consumer Affairs and Business Regulations, the Division of Banks and the Massachusetts Bankers Association.

The Project was supported in part by the Executive Office of Elder Affairs, the Administration on Aging (AOA), Department of Health and Human Services, Washington D.C. 20201, under Title VII Elder Abuse Prevention of the Older Americans Act.

The Attorney General’s Elderly Protection Project provided partial support. The Elderly Project itself is supported by Grant #92-DB-CX-0025, awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. The Bureau of Justice Assistance is a component of the Office of Justice Programs which also includes the Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. The grant provided by the Bureau of Justice Assistance has been monitored and the funding dispersed within the Commonwealth of Massachusetts by the Massachusetts Committee on Criminal Justice. The State grant number is #92-DV-018-601.

Programs supported by government sponsorship are encouraged to express freely their findings and conclusions. Points of view or opinions contained within this document are those of the authors and do not necessarily represent the official position or policies of the Administration on Aging or the U.S. Department of Justice.”

APPENDIX F

FOOTNOTES TO TEXT:

1 There may be instances where a local District Attorney or the Attorney General's Office will direct an investigation following a criminal complaint. The criminal investigation focuses solely on prosecution of the offender. A separate investigation is conducted by APS to determine if exploitation (which often does not reach the threshold of being criminal) has occurred, and what services are needed to stop further exploitation or assist the incapacitated or dependent adult in recovering from losses sustained. Sometimes the State Police and/or a federal law enforcement agency may become involved in a criminal investigation. However, the decision about which agencies do or do not participate in criminal investigations need not concern the financial institution and do not affect the financial institution's responsibilities under this protocol.

2 Three scenarios, "the financial prisoner", "the slipping elder" and the "bereaved widow(er)" were excerpted from A. Paul Blunt, J.D.,(1990). "From the frontlines: Banks and the responsibility to report financial exploitation", **NARCEA Frontline** , Vol. 3(3).

3 Bordenet, J., **AARP Law Enforcement Training Manual**, Section V. His excellent section on fraud and the elderly provided the majority of information concerning elder confidence crimes. *Also see* Detective Dennis Marlock, "How to Spoil a Con Man's Day" reprinted in the **Milwaukee Police Department's Confidence Crime Prevention: A Program Implementation Guide** (Published by the Department in January 1990); Friedman, M., "Confidence Swindles of Older Consumers," **Journal of Consumer Affairs**, Vol. 26, No. 1 (Summer 1992).

4 This awareness can be useful in uncovering more than just situations involving financial exploitation. It can unearth other forms of reportable abuse as well. For example, marked changes in a client's appearance, clothing, personal cleanliness, demeanor or mood; or a client's accompaniment by a companion not seen before, or one who suddenly tries to control the client, or treats the person condescendingly, may be a signal that abuse or neglect is occurring.

5 See Section V for a more detailed discussion of various fiduciaries appointed for incapacitated and dependent adults.

6 Materials developed by the **Suffolk County Executives Taskforce on Family Violence, Haupauge, NY** were invaluable in developing this section.

7 See Section V, Under-Reporting: Why Victims are Reluctant.

8 Tataro, Toshio, 1990. **Elder Abuse in the United States: An Issue Paper**. National Aging Resource Center on Elder Abuse (NARCEA).

⁹ Lachs, Mark; Williams, Christianna; O'Brien, Shelley; Hurst, Leslie; Horwitz, Ralph (1997). Risk factors for reported elder abuse and neglect; a nine-year observational cohort study.

10 According to the 2000 U.S. Census

NON-DISCRIMINATION NOTICE

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 1981, 2000d et seq.) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), and Title IX of the Education Amendments of 1972, (34 C.F.R. Parts 100, 104, 106 and 110), the Maine Department of Health and Human Services does not discriminate on the basis of sex, race, color, national origin, disability or age in admission or access to, or treatment or employment in its programs and activities.

Civil Rights Compliance Office, has been designated to coordinate our efforts to comply with the U.S. Department of Health and Human Services regulations (45 C.F.R. Parts 80, 84, and 91), the Department of Justice regulations (28 C.F.R. part 35), and the U.S. Department of Education regulations (34 C.F.R. Part 106) implementing these Federal laws. Inquiries concerning the application of these regulations and our grievance procedures for resolutions of complaints alleging discrimination may be referred to Civil Rights Compliance Office at 221 State Street, Augusta, ME 04333, Telephone number:

(207) 287-2567 (Voice) or 207-287-4479 (TTY), or the Assistant Secretary of the Office of Civil Rights of the applicable department (e.g. the Department of Education), Washington, D.C.

Funding for this publication was made available through the Maine Department of Health and Human Services
Office of Elder Services

Appropriation Number # 010-10A-6000-012-4929